Report

of the

Montana State Crime Commission

1930

Members of the Commission

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ALFRED ATKINSON, Bozeman, Montana
JUDGE S. D. McKINNON, Miles City, Montana
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REPORT OF THE MONTANA STATE CRIME COMMISSION

To the Governor and the Legislature of the State of Montana:

Pursuant to the act of the Legislative Assembly of 1929, the Montana State Crime Commission herewith submits a report concerning its recommendations for new legislation to improve the procedure of the courts of criminal justice of the State of Montana and the administration of the penal institutions of the state. We also submit our recommendations as to phases of the subject of criminal justice which we deem it advisable to have further investigation and study.

The findings and recommendations are respectfully submitted to the Legislative Assembly of 1931, in accordance with the provisions of the law creating the commission.

GEORGE B. WINSTON, Chairman.
ALFRED ATKINSON,
S. D. McKINNON,
JOHN HURLY,
HARRY B. BROOKS, Secretary.

Dated this 29th day of November, 1930.

CHAPTER I

GENERAL REPORT

The Montana State Crime Commission was created under an Act of the State Legislature passed and approved March 12, 1929.

The Commission is composed of five members, three of whom were appointed by the Chief Justice of the Supreme Court from among the district judges of the State, and two were appointed by the Governor, the latter two being laymen.

The Commission, as originally appointed, was composed of Judge George B. Winston of Anaconda, Chairman; Judge S. D. McKinnon of Miles City, Judge John Hurly of Glasgow, Alfred Atkinson, President of Montana State College, Bozeman; and Herbert M. Peet, Editor of the Great Falls Tribune, Great Falls. Mr. Peet was elected secretary of the Commission. Mr. Peet served until March, 1930, when his resignation was reluctantly accepted by the Governor and the Commission. Harry B. Brooks of Chinook was appointed in his place, and was elected secretary.

The purpose in creating the Commission was that it should examine the crime situation in Montana with special consideration of the procedure in the prosecution and trial of persons accused of crime, and of the punishment, pardon and parole of convicted persons, and that it might recomment legislation necessary to secure changes in our laws which would tend to provide the State with a more efficient system for swift and certain administration of criminal justice.

Following out the purpose of the Act, the Commission is submitting herewith a number of specific recommendations for legislation in the form of bills designed to improve the procedure in the prosecution of persons accused of crime. A number of general recommendations are included dealing with the detection of crime, the punishment of prisoners and the conduct of the State Prison. Appended to each bill will be found a brief statement of the reason for it, and the purposes and advantages of the measure.

The responsibility for the conditions which exist in relation to crime has been variously placed. The courts, police and prosecutors have been blamed, and juries, the management of penal institutions, the home, and the schools have also come in for criticism, and last, but not least, prohibition. Suggestions of remedies have been numerous and varied.

It is universally agreed, however, that the United States has more crime than any other civilized nation and more than is warranted in consideration of our high degree of civilization and efficiency. It is estimated, by those who have given study to the subject, that crime costs the United States the appalling sum of thirteen billion of dollars, or approximately the total of the war debt, every year. This means that it costs each of us more than one hundred dollars a year, or about four hundred dollars per family. This means that the individual contributes involuntarily three or four times as much as he pays for Federal Income Tax.

This high cost in dollars is not the only penalty we pay for crime. Twelve thousand people are murdered annually, which is fifty times the number recorded in Great Britain. The number of burglaries, robberies, larcenies and other felonies total an appalling and almost unbelievable figure. And the increase in serious crimes has taken place in the rural as well as the urban sections of the country. Good roads and automobiles are now exposing rural communities to the same hazards of burglaries, robberies, larcenies and other felonies as the cities.

We could not draw a more truthful picture of conditions than is contained in the report of the California Crime Commission, made to the Legislature of the State of California in the year 1927, and we take the liberty of quoting from that report:

"The studies of your Commission have shown that the amount of crime in this state, and indeed throughout the United States, is appalling. The first and most fundamental duty of every state is to insure the safety of the lives, homes and property of its citizens. It is sad, but true, that this primary duty is being performed worse throughout the United States, including the State of California, than in any other civilized country in the world. The prevalence of crime, particularly crimes of violence, in this country is simply staggering. Human life has become so cheap, disregard for it so great, that we have a homicide rate fifty times as high as that of England. Robberies at the point of a gun of citizens on the streets, of banks, stores, oil stations and like institutions, are of daily occurrence. No one's home is safe, for gangs of burglars always armed are ready to kill in order to break into every habitation from the mansion to the humblest dwelling; and in our cities and towns, every morning sees the report of a long list of burglaries frequently accompanied by most atrocious acts of violence. Gangs of gunmen ply their profession of killing for profit or pleasure. In broad daylight, and in the streets of our greatest cities, it is necessary to use armored cars protected by men armed to the teeth—veritable engines of war—to transport moneys or valuables. Even to move the United States mail, it has become necessary to call upon the armed forces of the United States, designed to repel foreign enemies, and to use armed marines acting under orders 'Shoot to kill', in order that this function of our national government may be carried on. Whether we realize it or not, we have a state of war, all the forces of organized crime making war upon the law-abiding citizenry of our country. Crime has become an organized business. It operates throughout the length and breadth of the land. It pays no attention to such artificial boundaries as city lines, county lines or state lines. It makes use of every modern invention, the high-powered automobile, the airplane, the automatic pistol, the machine gun. Crime is anti-social. It undermines the very foundations of the entire social structure. Either society must control and destroy organized crime, or organized crime will control and destroy society.

"There are probably a number of causes which contribute to the vast amount of crime. One of the main contributing causes, if not indeed the chief one, undoubtedly is the gross inadequacy and inefficiency of our system of criminal procedure to meet the present day conditions.

In dealing with the crime situation, as it exists today, we are dealing with a peculiarly twentieth century problem. Our system of criminal procedure is essentially a seventeenth and eighteenth century system. A procedure that may have been quite adequate to meet the conditions of those centuries is utterly inadequate in the present century. It is slow, cumbersome, archaic, inefficient. It should be swift, certain, modern and highly efficient. The present system, with its many opportunities for delay, with all the loopholes which it offers for the escape of the guilty, can almost be said to be an encouragement to crime. A swift, certain and efficient system, on the other hand, will be a most real and potent deterrent to crime. The entire history of criminal jurisprudence proves the truth of these observations.

"The reasons for the defects in our present system of criminal procedure are mainly historical. The system grew up in England. It grew up at a time when criminal prosecutions very frequently were crown persecutions for political offenses. Another strong contributing factor in the development of the system was the fact that punishment for crime, even relatively trivial crimes, was hanging, and the rights given to the defendant were very few. As a result of these conditions, there was gradually evolved a series of technical rules deliberately designed to give protection to the defendant, irrespective of whether he was guilty or innocent of the crime charged. Many of the rules were deliberately designed to prevent the proceedings from arriving at the truth. We have inherited, to a large degree, this system of rules. They may have been proper enough for the times and conditions under which they were evolved. They have no application in this day or to the conditions of today. England, where these rules grew up, discarded them and adopted a modern system of procedure seventy-five years ago. The result was a great and immediate reduction of the amount of crime. The old system was designed primarily for the protection of the defendant. It ignored almost entirely the rights of the public. The new system must protect all legitimate rights of a defendant, but at the same time must insure and protect, so far as possible, the great body of law-abiding citizens, the public."

We also take occasion to quote the late Chief Justice of the Supreme Court of the United States, and former President of the United States, the Honorable William Howard Taft. He said: "There is no subject upon which I feel so deeply as upon the necessity for reform in the administration of both civil and criminal laws. To sum it all up in one phrase, the difficulty in both is undue delay. It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization and that the prevalence of crime and fraud, which here is greatly in excess of that of the European countries, is due largely to the failure of the law and its administration to bring criminals to justice. I am sure that this failure is not due to corruption of officials. It is not due to their negligence or tardiness, although there may be both in some cases; but it is chiefly due to the system against which it is impossible for an earnest prosecutor and an efficient judge to struggle."

It is frequently asserted that it is easier for the criminal in this

country to escape justice than it is to convict him. The proportion between the number of crimes committed and the guilty persons punished is one of the most significant facts in connection with the administration of criminal justice in this nation.

We have leaned backwards in safeguarding the rights of the accused. The criminal knows that his chances for escape are greater than his chances of punishment. He knows that if convicted his punishment will be long delayed and in a large percentage of cases his conviction will not be sustained. He knows that if sent to prison his chances for an early release are good. He is encouraged in the commission of crime by the high proportion of offenders who escape punishment for their misdeeds.

It is undoubtedly true that the proportion of criminals who escape punishment in this country is much greater than is the case in other countries, and notably in comparison with the situation in England and Canada.

The Baltimore Crime Commission reports that in 1923 twenty-eight hundred and twenty-five serious crimes were committed in the city of Baltimore, seven hundred and thirty-four arrests were made on account of them, and only four hundred and forty persons were indicted—less than one indictment for six crimes.

The Cleveland Foundation Survey on Criminal Justice gives the following average disposition of one thousand cases in which arrests were made for felony:

Arrests		1000
Disposed of by police	127	
Nollied by public prosecutor	85	
Discharged or dismissed or found guilty of misdemeanors in municipal court	143	
No bill by grand jury	139	
Nollied by county prosecutor	107	
Made original pleas of guilty	91	
Changed pleas to guilty	148	
Variously disposed of	42	
Came to trial	118	1000

These figures indicate that there are very many crimes committed by those who are not apprehended or indicted, and that a large proportion of those who are indicted are never tried. The record in Baltimore and Cleveland is no doubt duplicated in all the cities of the country, if we can rely upon the statistics given out by the various crime commissions in the United States.

Another lamentable fact is that after the effort it takes to solve a crime, to arrest the criminal, to overcome all the obstacles which the law places in the way of his prosecution, he is kept only a little while in prison and is turned back to prey upon society once more. Round and round goes the circle for the professional criminal—the crime, the arrest, long prosecution, conviction, sentence, appeal, imprisonment, parole, and back to his crime again.

It is estimated that forty per cent of the inmates of our Montana prison are "repeaters." The parole and pardon laws are much abused. While the parole system may not be a bad thing, the "turn them loose system" is. (When a man is paroled in this state there is no check on him whatsoever; there is no surveillance, no making of reports, and no return of the man to prison if he again gets into bad habits.) Many men who are sent to our prisons for serious offenses are soon turned loose again to prey upon society. No sooner does a man enter the prison gate than his relatives and friends besiege the Governor and Prison Board to turn him loose. Society is not represented at any hearing held by the Prison Board to consider the release of a prison inmate, and society does not concern itself with the matter, but the relatives and friends do, and the Governor and Prison Board perfunctorily order a release.

Is it the weaknesses and the faults of the officers charged with the enforcement of the criminal laws or the defects of the law itself which make it so difficult to apprehend and punish the enemies of society? It is both; and only prompt and certain final punishment will deter criminals. The policy may have a restraining influence on the criminal class only in so far as apprehension follows the commission of crime and prosecution, conviction and punishment follow apprehension.

There can, of course, be no effective administration of criminal justice without the constant and sincere support of the public. What kind of a government we have depends upon what kind of citizens we have.

As was stated by the American Bar Association at one of its meetings, "Behind every defect in the enforcement of our laws, more dangerous than any fault in the machinery of our laws, more powerful than any other factor in accounting for the number of crimes committed in this country, is the apathy and indifference of the American people. The first great work to be accomplished in bringing about a better enforcement of the law must be the awakening of the public to a clear sense of the situation and their responsibility for it. Improvement in our laws can accomplish little unless accompanied by a determination on the part of our citizens to have those laws enforced."

If a community feels generally the need of strict law enforcement, this feeling will be reflected in the jury-box and in the courts generally; it will be reflected in the choice of those who are charged with the enforcement of the laws and in the administration of justice. A prosecuting attorney elected to put an end to gambling will insensibly relax his force and change his attitude if the community, during his term of office, becomes generally tolerant of gambling.

One reason why the United States lags so far behind our neighbor on the north, Canada, and England also, in the matter of law enforcement and in law observance, is that the standards of public opinion on this particular subject are higher with them than with us.

First, however, legislation is needed which will remove the handicap under which society is laboring in its war against the criminal. In protecting the rights of the accused, legislatures and courts have to too great an extent bound the hands of the State by undue delay in the

processes of administration of criminal law, by unnecessary technicalities of procedure and by strained construction of the law in favor of the defendant.

Legislatures and courts are concerned primarily with the protection of the rights and liberties of the people and as a bulwark against anarchy and violence. They are charged with the redress of public and private wrongs and with the protection of society against those who oppose law and order to promote their own selfish ends.

Of course, we all agree that in striving to protect public and individual rights, the accused of crime should have a fair and impartial trial of his case. It is the procedure which prevents that fair trial as far as the rights of society are concerned with which we are concerned and which we should reform.

If the law is so amended that the courts will feel justified in holding that the statutes relative to criminal law should receive a strict construction in favor of the public and against the individual charged with crime, a forward and important step will have been taken in the administration of criminal justice. There is every reason in this age and under the present appalling conditions in the United States in respect to crime that there should be no coddling of the criminal classes in the administration of the laws which are enacted for the apprehension for and punishment of crime. Justice should be swift and sure instead of being the crippled thing it is at present in our country.

CHAPTER II

REFORM OF ADMINISTRATION OF THE LAW

In the work of the Crime Commission in the past year and a half two main topics have been under investigation. The first is the matter of Court Procedure. To that subject our main attention has been given. The other main topic on which we have been engaged was a survey of the Montana State Prison, and the conditions prevailing there.

In connection with the administration of the courts, our work has covered a number of matters in our efforts to make speedier and more certain the conviction of the guilty person. The bills prepared and herewith submitted we believe would remedy several of the very evident defects and weaknesses of our system of criminal justice.

Several bills are prepared to give the judges of our trial courts more power to control the conduct of the trials and the processes of their courts and to eliminate unnecessary delays. Another group of bills is concerned with the elimination of technicalities and the prevention of reversals because of unimportant errors which do not affect the merits of the case. Several bills are concerned with the jury system. Another topic on which recommendations are made concerns the determination of a plea of insanity in criminal cases. The juvenile act has been studied and an entire revision of the act suggested.

None of the changes suggested are radical or experimental, but all are founded on tried methods in other states of the Union.

The bills suggested follow:

BILL NO. 1

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11847 OF THE REVISED CODES OF MONTANA OF 1921, WHICH PROVIDES THAT AN INDICTMENT OR INFORMATION MUST CHARGE BUT ONE OFFENSE EXCEPT WHERE IT IS COMMITTED BY DIFFERENT MEANS, AND PROVIDING THAT OTHER OFFENSES, IF CONNECTED IN THEIR COMMISSION OR OF THE SAME CLASS, MAY BE CHARGED IN SEPARATE COUNTS, AND AUTHORIZING CONSOLIDATION OF INDICTMENTS OR INFORMATIONS, AND PROVIDING FOR THE PROCEDURE IN THE TRIAL IF SEVERAL COUNTS OR OFFENSES ARE CHARGED, AND REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11847 of the Revised Codes of Montana of 1921 be, and the same is hereby, amended to read as follows:

"Section 11847. An indictment or information or complaint may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts,

and if two or more indictments or informations are filed in such cases the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information or complaint, but the defendant may be convicted of any number of the offenses charged, and each offense upon which the defendant is convicted must be stated in the verdict; provided, that the court in the interest of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment or information be tried separately, or divided into two or more groups and each of said groups tried separately. A verdict of acquittal of one or more counts shall not be deemed or held to be an acquittal of any other count."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon its passage and approval.

NOTE ON BILL NO. 1

Under this bill, for the purpose of illustration, if a person commits the crime of burglary, he may also be accused of grand or petit larceny and, if he commits robbery, he may also be charged with larceny from the person. If acts of this nature are charged in separate informations and are connected together in their commission, the Court may order them to be consolidated. This will effect a great saving in time and expense. No hardship is worked upon the defendant if, by his one act, he violates two or more statutes. The whole matter is submitted to one jury. Different statements of the same offense may be stated under separate counts under our present law, but discretion is lodged with the Court to require the State to elect upon which count it relies for conviction. Under this bill, the State is not required to elect and there is no logical reason that we can see why this should be done. If a person commits larceny, he should not complain because the State elects to charge that the crime was committed in different ways. Neither should the jury be limited in determining the guilt or innocence of the defendant upon one count if more are charged in the information.

BILL NO. 2

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11971 OF THE REVISED CODES OF MONTANA OF 1921, RELATING TO PRESUMPTION OF INNOCENCE, AND DEFINING THE WORDS 'REASONABLE DOUBT', AND PROVIDING THAT NO FURTHER INSTRUCTIONS NEED BE GIVEN A JURY IN A CRIMINAL ACTION UPON THE SUBJECTS HEREIN MENTIONED."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11971 of the Revised Codes of Montana of 1921 be, and the same is hereby amended, to read as follows:

"Section 11971: A defendant in a criminal action is presumed to be

innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal, but the effect of this presumption is only to place upon the State the burden of proving him guilty beyond a reasonable doubt."

Section 2. A reasonable doubt is defined as follows: "It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Section 3. In charging a jury in a criminal action, the Court may read to the jury Sections One and Two hereof and no further instructions on the subject of the presumption of innocence or defining reasonable doubt need be given.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Section 5. This Act shall take effect upon its passage and approval.

NOTE ON BILL NO. 2

This amendment deals with the subjects of presumption of innocence and reasonable doubt. It clarifies the meaning of the words "presumption of innocence" by adding to our present law the following: "But the effect of this presumption is only to place upon the State the burden of proving him (the defendant) guilty beyond a reasonable doubt."

Experience has shown that jurors are often confused as to the true significance of this presumption and it is with this in mind that the amendment is offered.

For years in this State we have had a cumbersome definition of the words "reasonable doubt." In order to rectify this, we propose a short definition. It is the same as used in the State of California, and amply covers the ground.

Another benefit that will follow from these amendments is that two principal instructions to juries will be standardized throughout the State.

BILL NO. 3

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 12109 OF THE REVISED CODES OF MONTANA OF 1921, RELATING TO THE TIME APPEALS MAY BE TAKEN TO THE SUPREME COURT IN CRIMINAL CASES, AND REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12109 of the Revised Codes of Montana of 1921 be, and the same is hereby, amended to read as follows:

"Section 12109: An appeal from a judgment may be taken within six months after its rendition, and from an order within sixty days after it is made."

Section 2. All acts and part of acts in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon its passage and approval.

NOTE ON BILL NO. 3

Under the present law, an appeal from a judgment of conviction may be taken within one year after its rendition. This amendment shortens the time to six months.

BILL NO. 4

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 12048 OF THE REVISED CODES OF MONTANA OF 1921, RELATING TO GROUNDS FOR A NEW TRIAL IN CRIMINAL ACTIONS AND AUTHORIZING THE COURT TO MODIFY THE JUDGMENT IF THE EVIDENCE SHOWS THAT THE DEFENDANT IS NOT GUILTY OF THE DEGREE OF THE CRIME OF WHICH HE IS CONVICTED, BUT IS GUILTY OF A LESSER DEGREE THEREOF, OR A LESSER CRIME INCLUDED THEREIN."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12048 of the Revised Codes of Montana of 1921 be, and the same is hereby, amended to read as follows:

"Section 12048: IN WHAT CASES IT MAY BE GRANTED. When a verdict has been rendered against the defendant, the Court may, upon his application, grant a new trial in the following cases only:

1. When the trial has been had in his absence, if the indictment or information is for a felony.

2. When a jury has received out of court any evidence other than that resulting from a view of the premises or any communication, document or paper referring to the case.

3. When the jury has separated without leave of the Court, after retiring to deliberate upon the verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors, which may be shown as provided in the Code of Civil Procedure.

5. When the Court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence, but if the evidence shows the defendant to be not guilty of the degree of the crime of which he was convicted, but guilty of a lesser degree thereof or of a lesser crime included therein, the Court may modify the judgment accordingly without granting or ordering a new trial, and this power shall extend to any Court to which the cause may be appealed.

7. When new evidence is discovered material to the defendant and which he could not, with reasonable diligence, have discovered and produced at the trial.

When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the Court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon its passage and approval.

NOTE ON BILL NO. 4

In the proposed amendment there is only one change in our present statute, viz: Subdivision Six. It permits the Court, in a proper case, to modify the judgment instead of granting a new trial. To illustrate: If a person is convicted of assault in the first degree and the Court concludes that the evidence is insufficient to sustain the charge, but is sufficient to warrant a conviction of assault in the second degree, it may modify the judgment accordingly. Now, under such circumstances, a new trial would have to be granted. This means great delay and also additional expense to the taxpayers of the State.

BILL NO. 5

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE STATE OF MONTANA OF AN AMENDMENT TO SECTION 23 OF ARTICLE 3 OF THE CONSTITUTION OF THE STATE OF MONTANA RELATING TO JURY TRIALS, AND PROVIDING THAT IN FELONY CASES, EXCEPT WHERE THE DEATH PENALTY MAY BE IMPOSED, FIVE-SIXTHS IN NUMBER OF THE JURY MAY RENDER A VERDICT, AND PROVIDING THAT A JURY TRIAL MAY BE WAIVED BY CONSENT OF BOTH PARTIES EXPRESSED IN FELONY CASES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. There shall be submitted to the qualified electors of the State of Montana at the next general election to be held in said State, the following amendment to Section 23 of Article 3 of the Constitution of the State of Montana relating to jury trials:

That Section 23 of Article 3 of the Constitution of the State of Montana be amended so as to read as follows:

"Section 23 (of Article 3): The right of trial by jury shall be secured to all, and remain inviolate, but in felony cases, by the consent of both parties, expressed in open Court by the defendant and his counsel, a trial by jury may be waived, and in all civil cases and in all criminal cases not amounting to felony, upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of

jurors than the number provided by law. A jury in a Justice's Court, both in civil cases and in cases of criminal misdemeanor, shall consist of not more than six persons. In all felony cases, except where the death penalty may be imposed, five-sixths in number of the jury may render a verdict, and in all civil cases and in all criminal cases not amounting to felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all of such jury concurred therein."

Section 2. The vote upon this amendment shall be counted and canvassed by such officials and in such manner as is provided by law for the counting and canvassing of the votes for members of Congress and, if a majority of all votes cast at said election for and against said amendment shall be in favor of the amendment, the Governor of the State shall immediately so declare by public proclamation, and said amendment shall be in full force and effect as part of the Constitution from and after the date of said proclamation.

Section 3. That, in addition to the requirements of law, there shall appear on the official ballot the following words:

[ ] For the amendment to the Constitution authorizing five-sixths of the jury to render a verdict in felony cases, except where the death penalty may be imposed, and providing that a jury trial may be waived, by consent of both parties in felony cases.

[ ] Against the amendment to the Constitution authorizing five-sixths of the jury to render a verdict in felony cases, except where the death penalty may be imposed, and providing that a jury trial may be waived, by consent of both parties in felony cases.

And the elector shall designate his preference for either of the propositions by making an X in brackets before the proposition desired.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Section 5. This Act shall be in full force and effect from and after its passage and approval.

NOTE ON BILL NO. 5

It is doubtful in this State if a defendant may waive a jury trial in a felony case, but there is no logical reason why he should not be permitted to do so if both parties to the case are agreeable. This amendment provides that a jury trial may be waived in any felony case by consent of both parties (state and defendant) expressed in open Court by defendant and his counsel.

California has a similar provision. In the State of Maryland this right has been given the defendant for more than a century. Connecticut, Michigan, and a few other states also permit a defendant to waive a jury trial in felony cases. Statistics show that defendants have taken advantage of this right in numerous felony cases. It does not seem

right that a defendant should be compelled (as he now is) to submit his case to a jury if he and the State prefer a trial before the Court.

Another change is proposed by this amendment. It permits a jury less than twelve, that is, five-sixths, or ten, jurors, to render a verdict in any felony case except where the death penalty may be imposed. In civil and misdemeanor cases we have permitted two-third verdicts, or eight jurors out of twelve, to render verdicts for years, and no complaint has been offered against this system. On the whole it has worked very well. We also authorize our Supreme Court to render majority decisions in felony cases. The amendment, we believe, improves our jury system because, first, it guards against jury fixing; second, prevents, in a measure, disagreements; and, third, minimizes compromise verdicts.

BILL NO. 6

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11874 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO DEPARTURES FROM THE FORM OR MODE PRESCRIBED BY THE PENAL CODE OF THE STATE OF MONTANA IN RESPECT TO PLEADINGS AND PROCEEDINGS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11874 of the Revised Codes of the State of Montana, of 1921, be, and the same is, hereby amended to read as follows:

"Section 11874. Neither a departure from the form or mode prescribed by this Code in respect to any pleading or proceeding, nor any error or mistake made therein, renders it invalid, unless it has actually prejudiced the defendant and unless it shall affirmatively appear that the departure or error complained of has resulted in a miscarriage of justice."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 6

This Act proposes to amend Section 11874 of the Revised Codes of Montana, relating to departures from the form or mode prescribed by the Penal Code of the State of Montana in respect to pleadings and proceedings.

It broadens and makes more liberal the provisions of Section 11874 by providing that no departures from the form or mode prescribed by the Penal Code in respect to pleading or proceeding, or any mistake or error therein, renders it invalid unless it has actually prejudiced the defendant and unless it shall affirmatively appear that the departure or error complained of has resulted in a miscarriage of justice.

This amendment is in accord with the present trend of legislation in many states in the United States. Its purpose is to prevent the

reversal of criminal cases where it appears that some error has been committed by the trial Court in the admission or exclusion of evidence or in the giving of or refusing to give an instruction, or when the indictment or information does not conform to the form prescribed by the Code, unless the defendant shall make it affirmatively appear to the Court that such departure or error has resulted in a miscarriage of justice.

This proposed amendment to Section 11874 is urged in order that the section as amended may be in harmony with proposed Bill No. 7.

BILL NO. 7

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO AND TO REGULATE THE GRANTING OF NEW TRIALS AND THE REVERSAL AND SETTING ASIDE OF JUDGMENT IN CRIMINAL CAUSES AND REPEALING SECTION 12125 OF THE REVISED CODES OF THE STATE OF MONTANA OF 1921, RELATING TO JUDGMENT WITHOUT REGARD TO TECHNICAL ERRORS AND ALL OTHER ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. No judgment shall be set aside or reversed, or new trial granted, in any criminal cause by any District Court, or by the Supreme Court, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the Court to which the application is made, after an examination of the entire cause, it shall affimatively appear that the error complained of has resulted in a miscarriage of justice.

Section 2. That Section 12125 of the Revised Codes of the State of Montana of 1921, relating to judgment without regard to technical errors, and all other acts and laws and part of all acts and laws in conflict with the provisions of this act be, and the same are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and approval by the Governor.

NOTE ON BILL NO. 7

This bill is one that has the approval of the American Bar Association as well as of many leading jurists and lawyers in the United States. Similar acts have been embodied in the statutes of other states. California has embodied a similar statute in its Constitution, and Oklahoma also has a similar provision.

As can be readily gathered from a reading of the bill, the intention thereof is to minimize the number of reversals in criminal cases which have been and are now being brought about in appellate courts for no other reason than that the trial court has erred in some manner of form or procedure which in no way has affected the substantial rights of the defendant, and which, in fact, has not affected the merits of the case.

BILL NO. 8

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 12011 OF THE REVISED CODES OF THE STATE OF MONTANA OF 1921, BEING A PART OF CHAPTER 26 OF PART II, OF THE CRIMINAL CODE OF THE STATE OF MONTANA RELATING TO CONDUCT OF JURY AFTER SUBMISSION OF THE CASE AND RELATING TO WHAT PAPERS THE JURY MAY TAKE WITH THEM UPON RETIRING FOR DELIBERATION UPON THEIR VERDICT."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12011 of the Revised Codes of the State of Montana, of 1921, be amended, and the same is hereby amended, to read as follows:

"Section 12011. What Papers May Be Taken With Them. Upon retiring for deliberation, the Court in its discretion, may permit the jury to take with them any exhibits and all papers (excepting depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the Court, be taken from the person having them in possession. They may also take with them the written instructions and notes of the testimony or other proceedings upon the trial taken by themselves, or any of them, but none taken by any other person."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 8

This bill is an amendment to Section 12011 of the Revised Codes of Montana. The purpose of this proposed amendment is this:

Under the law as it now is there is a serious doubt as to whether or not it is permissible for the trial court to allow the jury to take with them the exhibits in the case, such as clothes, a gun or a knife, or other articles or objects which have been admitted in evidence in the case, unless the defendant or his counsel consents to the same being done. Often the jury desires to take such exhibits with them to the juryroom, and frequently after the jury has retired to deliberate on its verdict the jury sends a request to the judge of the court that they be permitted to have such exhibits in the juryroom. There is no good or sound reason why the jury should not take with them into the juryroom all the exhibits in the case which have been admitted in evidence during the trial, and no right of the defendant can be prejudiced by this being done.

BILL NO. 9

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11973 OF THE REVISED CODES OF THE STATE OF MONTANA OF 1921, RELATING TO SEPARATE TRIALS OF DEFENDANTS JOINTLY CHARGED WITH A PUBLIC OFFENSE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11973 of the Revised Codes of the State of Montana, of 1921, be and the same is hereby amended to read as follows:

"Section 11973. Trial of Defendants Jointly Charged With Crime. When two or more defendants are jointly charged with any public offense, whether felony or misdemeanor, they must be tried jointly unless the Court orders separate trials. In ordering separate trials, the Court, in its discretion, may order a separate trial as to one or more defendants and a joint trial as to the others, or may order any number of defendants to be tried at one trial and any number of the others at different trials, or may order a separate trial for each defendant. If the defendants are tried jointly, the State and the defendants shall be entitled to the number of peremptory challenges prescribed by Section 11955 of the Revised Codes of the State of Montana, 1921, and Section 11956 of the Revised Codes of the State of Montana, as amended by Chapter 4 of the Laws of the Nineteenth Legislative Assembly, 1925, of the State of Montana, which challenges on the part of the defendants must be exercised jointly. Each defendant shall be entitled to three additional challenges, which may be exercised separately; the State shall also be entitled to additional challenges equal to the number of all of the additional separate challenges allowed the defendants."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and approval.

NOTE ON BILL NO. 9

This Act is a proposal to amend Section 11973 of the Revised Codes of Montana. Under the provisions of Section 11973, when two or more defendants are jointly charged with a felony the defendant requiring it must be tried separately. This amendment, if it should become the law, would require defendants charged jointly with a public offense, whether a felony or a misdemeanor, to be tried jointly unless the Court orders separate trials. It also provides for additional separate challenges for each defendant as well as for the State.

Under the present law in almost every case where two or more defendants are charged jointly with a felony, separate trials are demanded, even though there may be no good or valid reason for so doing. It is done more as a gamble than otherwise, and the judge is not permitted to exercise any discretion in the matter. He must grant separate trials.

The expense to the taxpayers of the State brought about by these separate trials is large and society should not be burdened with this unnecessary expense.

The amendment is an important and much desired change in the law, and will, if it becomes the law, facilitate the trial of cases in saving much time as well as expense. It will impose in the judge a discretion which the Court should have and which is not likely to be abused.

A similar law prevails in the State of California and possibly in other states.

BILL NO. 10

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11906 OF THE REVISED CODES OF THE STATE OF MONTANA OF 1921, RELATING TO OBJECTIONS FORMING GROUNDS OF DEMURRER AND WHEN SUCH OBJECTIONS MAY BE TAKEN."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11906 of the Revised Codes of the State of Montana of 1921, relating to objections, forming grounds of demurrer, when taken, shall be, and the same is hereby, amended to read as follows:

"Section 11906. Objections, Forming Ground of Demurrer, When Taken. When the objections mentioned in Section 11898 appear on the face of the indictment or information, they can only be taken by demurrer, and all objections on the grounds that it does not state facts sufficient to constitute a public offense not particularly set out in the demurrer to the indictment or information, shall be deemed waived and cannot thereafter be raised either on motion in arrest of judgment or a motion for new trial or on appeal."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and approval by the Governor.

NOTE ON BILL NO. 10

This bill proposes to amend Section 11906 of the Revised Codes of Montana, which provides how objections to an indictment or information which form the grounds of a demurrer thereto shall be taken.

Section 11898 of the Revised Codes of Montana sets forth the grounds upon which a defendant may demur to an indictment or information, these grounds being five in number. Subdivision 4 of said Section 11898 states that the defendant may demur to the indictment or information on the ground that the facts stated in the indictment or information do not constitute a public offense. Section 11906 (which this bill proposes to amend) provides that when the objections to the indictment or information mentioned in Section 11898 appear on the face of the indictment or information they can only be taken by demurrer, except that the objection to the jurisdiction of the Court over the subject matter of the indictment or information or that the facts stated do not constitute a public offense may be taken at the trial under the plea of not guilty or after trial or in arrest of judgment.

It is readily seen that under the present law a defendant can demur to the indictment or information on the broad grounds that it does not state facts sufficient to constitute a public offense, without informing the State or the Court, either in his demurrer or in his argument through counsel, of the particulars wherein it fails to state facts sufficient to

constitute a public offense. He can go to trial, and if convicted he can urge again the insufficiency of the facts, and can then bring to the attention of the State and of the Court, for the first time, the particulars of his objections—and objections that were not urged at all prior to the trial. This is often done, and often a reversal of the case is had on the grounds of insufficient statement of facts which were not stated or urged before trial. Thus the defendant is allowed to "lay low" before and at trial and spring the trap after conviction.

This is an unfair proceeding to the State and to the Court. It is a reprehensible practice and is giving the defendant an advantage which the State does not have and often brings about miscarriage of justice so far as society and the State are concerned.

The proposed amendment will require the defendant to point out to the State and to the Court, in his demurrer, the particulars of his objections and give the State and the Court an opportunity to correct the defect by amendment before trial, and if he, the defendant, fails to do this, he shall be deemed to have waived all objections to the indictment or information on the grounds that it does not state facts sufficient to constitute a public offense which are not particularly set forth in his demurrer, and all such objections cannot be thereafter raised either on motion in arrest of judgment or on motion for new trial or on appeal.

This much desired amendment to the present law, if enacted into law, can in no wise result in any injury to the defendant.

BILL NO. 11

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ALTERNATE JURORS IN ANY FELONY CASE THE TRIAL OF WHICH IS LIKELY TO BE A PROTRACTED ONE, AND PROVIDING THE METHOD OF DRAWING SAID JURORS AND SPECIFYING THEIR DUTIES, AND REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Whenever, in the opinion of a judge of a District Court about to try a defendant against whom has been filed any indictment or information for a felony, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or two additional jurors, in its discretion, to be known as "alternate jurors."

Such jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges; provided, that the prosecution and the defendant shall each be entitled to one peremptory challenge to such alternate jurors.

Such alternate jurors shall be seated near, with equal power and facilities for seeing and hearing the proceedings in the case, and shall

take the same oath as the jurors already selected, and must attend at all times upon the trial of the cause in company with the other jurors; and for a failure so to do are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the Court, upon each adjournment of the Court; but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors shall also be kept in confinement with the other jurors; and, except as hereinafter provided, shall be discharged upon the final submission of the case to the jury.

If, before the final submission of the case, a juror become ill, so as to be unable to perform his duty, the Court may order him to be discharged in that event, or in case a juror should die, the name of an alternate juror may be drawn, and he shall then take his place in the jury box, and be subject to the same rules and regulations as though he had been selected as one of the original jurors.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon its passage and approval.

NOTE ON BILL NO. 11

This amendment is proposed as a safeguard against a re-trial of a case in the event a juror should become ill or die. It provides that, if a trial is going to be a protracted one, the Court may call one or two additional jurors. Each juror listens to the evidence and is ready to take a place as a regular juror in case of an emergency. A great many states have such a law and it has been of great benefit.

BILL NO. 12

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PREPARATION OF TRANSCRIPT ON APPEAL IN CRIMINAL CASES, THE FILING THEREOF, AUTHORIZING THE APPELLATE COURT TO EXTEND TIME FOR FILING TRANSCRIPT, AND REPEALING SECTION 12116 R.C.M. 1921, RELATING TO DUTY OF CLERKS UPON APPEAL, AND ALL OTHER ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. The party taking an appeal in a criminal case must, within fifteen days after the filing of the notice of appeal, in case the bill of exceptions has been settled by the judge before the giving of said notice, but, if not, then within fifteen days from the settlement of the bill of exceptions, or within such further time as may be granted, upon proper showing, by the appellate court, transmit to the clerk of the appellate court three typewritten transcripts, one original and two legible carbon copies, each certified by the clerk of the trial court; and, upon receipt thereof, the clerk of the appellate court must file the same and perform the same services as in civil cases without charge. Each transcript shall contain the things mentioned in Section 12045 R.C.M.

1921, but the testimony taken in the trial court, or so much thereof as may be necessary to present the questions on appeal, may be presented by question and answer.

Section 2. That Section 12116 R.C.M. 1921, relating to duty of clerks upon appeal, and all other acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon its passage and approval.

NOTE ON BILL NO. 12

When an appeal is taken in a criminal case under our present law, it is incumbent on the Clerk of the Court to prepare the transcript on appeal. Many clerks have had no experience in this work and, as a result, there is either great delay in the preparation of the transcript or it is not prepared in a proper manner. To remedy this situation, this amendment is offered. It makes it the duty of the party taking an appeal to see that three legible copies of the transcript are lodged with the Clerk of the Supreme Court. The responsibility rests with the party appealing to prepare the transcript in accordance with the rules of the Court. But the real benefit to be derived from this is that the testimony taken at the trial may be left in question and answer. It simplifies the proceedings on appeal because the reporter, in transcribing the testimony, not only prepares the bill of exceptions, but also the transcript on appeal, with the exception of the judgment roll. In this manner appeals will be facilitated and cases should reach the Supreme Court much sooner than at the present time.

BILL NO. 13

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH THE PLACE OF TRIAL OF PERSONS CHARGED WITH OFFENSES COMMITTED IN OR AGAINST ANY AIRCRAFT WHILE IN FLIGHT OVER THE STATE OF MONTANA."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Any person who commits an offense in or against any aircraft while it is in flight over this State (or any part thereof) may be tried in this State. The trial in such case may be in any county over which the aircraft passed in the course of such flight.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 13

Proposed Bill No. 13 may be partially covered by other statutes. The sole purposes of this proposed measure is to make more definite the question of venue in cases committed by or against aircraft.

BILL NO. 14

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT UPON CONVICTION FOR CRIME, IN ADDITION TO THE PUNISHMENT PRESCRIBED, AND AS A PART OF THE SENTENCE, THE COURT MAY IMPOSE UPON THE DEFENDANT THE DUTY TO PAY THE WHOLE OR ANY PART OF THE DISBURSEMENTS OF THE PROSECUTION, LIMITING AMOUNT IN COURTS NOT OF RECORD, AND PROVIDING FOR ITS COLLECTION BY EXECUTION OR ENFORCEMENT IN THE SAME MANNER AS THE SENTENCE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. In all criminal actions, upon conviction of defendant, in addition to the punishment prescribed and as a part of the sentence, the Court in its discretion may adjudge that defendant shall pay the whole or any part of the disbursements of the prosecution; provided that no fine, inclusive of costs, imposed by a court not of record, or upon appeal from such court, shall exceed the sum of Five Hundred Dollars, and payment thereof may be enforced in the same manner as the sentence or by execution against property.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 14

We have two or three statutes in Montana where the maximum penalty allowed by law upon conviction of a defendant does not exceed five or ten dollars. No provision is made for the defendant to bear the costs of the prosecution, upon the trial or upon an appeal. Recently a defendant was convicted in Justice Court on two charges brought against him in Chouteau County, and fined the maximum fine of either five or ten dollars. Numerous witnesses were subpoenaed at a cost to the county of approximately one hundred dollars. The defendant promptly appealed to the District Court and the County Attorney dismissed the cases rather than put the county to the expense of new trials on appeal where the maximum penalty which could be prescribed did not exceed the sum mentioned. Minnesota has an act of this nature, the same being Section 7988 of their Code.

BILL NO. 15

A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL SECTION 12026 OF THE REVISED CODES OF THE STATE OF MONTANA OF 1921, IN RELATION TO THE JURY ASCERTAINING THE VALUE OF PROPERTY IN CRIMINAL ACTIONS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12026 of the Revised Codes of the State of

Montana of 1921, relating to the jury ascertaining the value of property in criminal actions be, and the same is hereby, repealed.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 15

Bill No. 15, repealing Section 12026, we believe should be adopted. Under present statutes the theft of certain livestock in particular constitutes grand larceny, regardless of value. No useful purpose is served by requiring the jury in such cases to fix the value of the property and our Supreme Court has already held this statute as practically a dead letter.

BILL NO. 16

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE ASSESSMENT OF PUNISHMENT BY A JURY IN THEIR VERDICT OF GUILTY TO FIRST OR SECOND DEGREE MURDER AND IN ALL OTHER CASES BY THE COURT. REPEALING SECTIONS 12027, 12028, 12029, 12030 AND 12031 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, BEING A PART OF CHAPTER 27, PART II, OF THE PENAL CODE OF THE STATE OF MONTANA, ENTITLED 'THE VERDICT'."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. When a jury finds a verdict of guilty of murder in the first or second degree, they may assess and declare the punishment in their verdict; and the Court must render a judgment according to such verdict.

In all other cases of conviction upon a verdict the Court must assess and declare the punishment, and render judgment accordingly.

Section 2. Sections 12027, 12028, 12029, 12030 and 12031 of the Revised Codes of the State of Montana, of 1921, being a part of Chapter 27, Part II, of the Penal Code of the State of Montana, are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its approval by the Governor.

NOTE ON BILL NO. 16

The object of this bill is to take away the power of juries in fixing sentences except in first and second degree murder. The reason for this is that upon a trial of a case by a jury the Court is not permitted to submit to the jury questions concerning the reputation of a defendant, and in many instances the jury may not know that the defendant has been frequently before the Court upon criminal charges, nor that he has a criminal record. Should the defendant in a criminal case be convicted it is permissible for these facts to be called to the attention of the Court at the time of sentence, consequently the Court or judge is in better position to fix a sentence than is a jury.

BILL NO. 17

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PRESUMPTION ON APPEAL THAT DEFENDANT, CONVICTED IN DISTRICT COURT, WAS PRESENT AT ALL STAGES OF THE TRIAL, UNLESS IT SHALL AFFIRMATIVELY APPEAR BY THE RECORD TO THE CONTRARY; AND PRESUMPTION THAT THE COURT GAVE PROPER ADMONITION TO JURY AT EACH RECESS OR ADJOURNMENT OF COURT."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. In all cases appealed to the Supreme Court from judgment of conviction or upon denial of motions for new trial, unless the record on appeal affirmatively shows to the contrary, it shall be conclusively deemed that the defendant was present in court at all stages of the trial; and unless the record affirmatively shows to the contrary, upon all such appeals, it shall be conclusively deemed that the Court or Judge gave the proper admonition, in accordance with the provisions of Section 11999, Revised Codes of 1921, to the jury at each recess or adjournment of the court, and no case shall be reversed on appeal or motion for new trial because of the mere failure of the record to show the presence of the defendant as aforesaid or the failure of the record to show that such admonition was given to the jury.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 17

It has been held in Montana that where the record in a criminal case failed to show the presence of the defendant at all times during the trial, the case would be reversed upon appeal. A situation of this kind can arise through carelessness upon the part of some official in failing to show the presence of the defendant at all stages during the trial. The object of this bill is merely to prevent the reversal of a case where the record happens to be silent, throwing the burden upon an appealing defendant to show that a portion of the trial was conducted in his absence.

BILL NO. 18

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11870 OF THE REVISED CODES OF THE STATE OF MONTANA, BEING A PART OF CHAPTER 17, OF PART II, OF THE CRIMINAL CODE OF THE STATE OF MONTANA, RELATING TO RULES OF PLEADING AND FORMS OF THE INFORMATION AND INDICTMENT AND RELATING TO THE VARIANCE BETWEEN THE CHARGE CONTAINED IN THE INDICTMENT OR INFORMATION AND THE EVIDENCE OFFERED IN PROOF THEREOF, AND PROVIDING THAT NO VARIANCE BETWEEN THE STATEMENT CONTAINED IN THE INDICTMENT OR INFORMATION AND THE EVIDENCE OFFERED IN PROOF THEREOF SHALL BE GROUNDS FOR ACQUITTAL."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11870 of the Revised Codes of the State of Montana of 1921, be, and the same is hereby, amended to read as follows:

"Section 11870. Whenever on the trial of an indictment or information there shall appear to be a variance between the statement in the indictment or information and the evidence offered in proof thereof in respect to time or in the Christian name or surname, or both Christian name and surname, or other description whatsoever, or of any person whomsoever therein named or described, or in the name of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, such variance shall not be deemed grounds for an acquittal of the defendant unless the court before whom the trial shall be had shall affirmatively find that such variance is material to the actual merits of the case and prejudicial to the defense of the defendant; and the court may, in its judgment, direct the indictment or information to be amended according to the proof."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 18

This act is a proposal to amend Section 11870 of the Revised Codes of Montana which has relation to amendments to indictments and informations upon the trial of a criminal case. It broadens and makes more liberal the provisions of Section 11870 and is in harmony with the intent and spirit of Proposed Bills Nos. 6, 7 and 10, and will, if enacted into law, prevent the reversal of cases such as The State of Montana vs. Lee, reported in 33 Montana, at page 203.

The information in this case stated the name of this injured person as "Frank Rex," whereas his own testimony showed that it was "Frank Rook." This variance was held to be fatal to a conviction and the cause was reversed for this alleged error.

BILL NO. 19

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11853 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO THE SUFFICIENCY OF INDICTMENTS AND INFORMATIONS AND TO DEFECTS AND IMPERFECTIONS THEREIN."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11853 of the Revised Codes of the State of Montana, of 1921, be, and the same is, hereby amended to read as follows:

"Section 11853. No indictment or information shall be deemed invalid nor shall the trial, judgment or other proceeding thereon be stayed, arrested or in any manner affected, for omitting to state the time at

which the offense was committed in any case where time is not of the essence of the offense, nor for stating that time imperfectly; nor for stating the offense to have been committed on a day subsequent to the day of the filing of the indictment or information, or upon an impossible date, or on a date that never happened; nor for want of the proper or perfect venue, nor for want of venue at all; nor for want of the statement of the value or price of any matter or thing, or the amount of damages, injury or spoil in any case where the value or price or the amount of damages, injury or spoil is not of the essence of the offense; nor for the want of an allegation of the time or place of any material fact when the time and place have once been stated in the indictment or information; nor for any surplusage or repugnant statement, when there is sufficient matter alleged to indicate the crime and person charged; nor for want of averment of any matter not necessary to be proved; nor for any error committed at the instance or in favor of the defendant; nor because the evidence shows him to be guilty of a higher degree of the offense than that of which he is convicted; nor for any other defect or imperfection which does not tend to prejudice the substantial rights of the defendant on the merits."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 19

This bill amends Section 11853 of the Revised Codes of Montana, which provides that certain defects and imperfections in indictments and informations, and in proceedings generally, and in matter of form, which do not tend to the prejudice of a substantial right of the defendant upon the merits, shall not be grounds for holding an indictment or information insufficient, and shall not affect the trial, judgment or other proceeding.

This amendment particularizes these so-called defects and imperfections and does not leave to either the professional or lay mind the right to broadly or loosely speculate on what are or what are not defects and imperfections, as referred to in said section.

It should also prevent the reversal of cases such as the State of Montana vs. Mosley, 41 Montana, Page 402, and The State of Montana vs. Besekove, 34 Montana, Page 41, as well as other cases, and will grant to the trial court, as well as to the appellate court, the power which they should have to decide the case upon its merits.

BILL NO. 20

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN EVERY CRIMINAL ACTION THE PROSECUTION MAY INTRODUCE EVIDENCE OF THE CRIMINAL RECORD, EITHER ORAL OR WRITTEN, OF THE ACCUSED."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. In every felony action, the prosecution shall be permitted to introduce in evidence the record of a prior conviction of the accused of a felony even though the defendant neglects to become a witness in his own behalf and notwithstanding that the defense has not first introduced evidence of the good character of the accused.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 20

This bill, if enacted into law, will permit the State, in the trial of every felony case, the right to introduce into evidence the record of the previous conviction of a felony of the accused as a part of the State's case in chief, notwithstanding the fact, if it be a fact, that the accused is not charged with prior conviction of a felony in the indictment or information, and even though the accused has not introduced evidence of his good character.

There is no good reason why this right should not be given to the State. If a man is formally accused of the commission of a felony and has previously been convicted of a felony, it is common sense that those who are trying him for a crime should know something of his previous character. A man who has once committed a felony is more likely to commit a crime than one who has not been declared guilty of a felony, and the fact of his previous conviction naturally has a bearing upon the question of his guilt or innocence of the crime for which he is being tried. Criminal statistics develop the fact that approximately sixty per cent of the inmates of our prisons are second, even third and fourth offenders.

This bill has the endorsement of the Northwestern Association of Sheriffs and Police.

BILL NO. 21

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 12177 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, BEING A PART OF CHAPTER 40 OF PART TWO OF THE PENAL CODE OF THE STATE OF MONTANA, RELATING TO WHO MAY BE WITNESSES IN CRIMINAL ACTIONS, SAID SECTION 12177 RELATING PARTICULARLY TO WHEN THE DEFENDANT MAY BE SWORN AND WHEN HE MAY TESTIFY IN HIS OWN BEHALF, AND PROVIDING THAT HIS FAILURE TO TESTIFY MAY BE CONSIDERED BY THE COURT AND JURY AND MAY BE THE SUBJECT OF COMMENT BY COUNSEL."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12177 of the Revised Codes of the State of Montana, of 1921, relating to when the defendant is not a competent witness and when he may testify, be, and the same is hereby amended to read as follows:

"Section 12177. A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but he may be sworn and may testify in his own behalf, and the jury in judging of his credibility and the weight to be given to his testimony may take into consideration the fact that he is the defendant and the nature and enormity of the crime of which he is accused. The defendant's failure to testify may be considered by the court and jury and may be the subject of comment by counsel."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 21

This bill provides that the failure of the defendant to testify in a case where he is being tried for a crime may be considered by the court and jury and may be the subject of comment by counsel in the case. It proposes to amend Section 12177 of the Revised Codes of the State of Montana.

Under this Section 12177 if the defendant does not claim the right to be sworn or does not testify, it cannot be used to his prejudice, and the attorney prosecuting must not comment to the court or jury on the same. There is no good reason why the prosecuting attorney should be barred from making comment upon the failure of the defendant to testify. If the defendant is innocent why should he not be willing to submit to the jury his knowledge of the alleged crime, and if he fails to do so or chooses to have the issue go to the jury without stating to the jury his own knowledge of the matter at issue, then the county attorney should be permitted to present to the jury such inferences as may be reasonably drawn by him from this failure to speak on the part of the defendant.

The Montana State Bar Association, at its annual meeting held in August, 1924, went on record as approving this bill. A provision identical with this bill is a part of the Constitution of the State of Ohio. Many lawyers and jurists throughout our country generally, favor the enactment of such a bill into law. We are informed that the State Bar Association of California has given its approval to a similar measure.

BILL NO. 22

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO AND PROVIDING THE FORM OF INSTRUCTION TO BE GIVEN IN ANY CRIMINAL TRIAL OR PROCEEDING WHEN EVIDENCE OF FLIGHT OF A DEFENDANT IS RELIED UPON AS TENDING TO SHOW GUILT."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. In any criminal trial or proceeding, when evidence of flight of a defendant is relied upon as tending to show guilt, the court shall instruct the jury substantially as follows:

"The flight of a person immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not sufficient in itself to establish guilt, but is a fact which, if proven, the jury may consider in deciding his guilt or innocence. The weight to which such circumstance is entitled is a matter for the jury to determine."

No further instruction on the subject of flight need be given.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 22

This bill, if it should become a law, will standardize and simplify the instruction to be given, when it is proper to give such an instruction, upon the subject of flight.

Courts have differed as to the form of such instruction, and in one case at least in our own jurisdiction the trial court was reversed because of its failure, in the opinion of the Supreme Court, to properly instruct the jury on the subject of flight (see State vs. Bonning, 60 Montana, Page 362).

A similar act has become the law in the State of California.

BILL NO. 23

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11898 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO THE GROUNDS OF DEMURRER TO AN INDICTMENT OR INFORMATION."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11898 of the Revised Codes of the State of Montana, of 1921, be, and the same is hereby, amended to read as follows:

"Section 11898. Grounds of Demurrer. The defendant may demur to the indictment or information, when it appears upon the face thereof, either—

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the Court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirements of Sections 11843, 11844 and 11845 of this code;

3. That the facts stated do not constitute a public offense, setting forth the particulars wherein the indictment or information do not constitute a public offense;

4. That it contains any matter, which if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 23

This bill proposes to amend Section 11898 of the Revised Codes of Montana relating to the grounds of demurrer to an indictment or information. The present law of said Section 11898 provides for five different grounds of demurrer to an indictment or information, among which is that more than one offense is charged and that the facts stated in the indictment or information are not sufficient to constitute a public offense.

In this bill the objection that more than one offense is charged is eliminated in order that this section, if it be enacted into law, may be in harmony with the provisions of Proposed Bill No. 1, which provides that two or more offenses may be charged in the same indictment or information. If Proposed Bill No. 1 should be enacted into law, Section 11898 should, of course, be amended in order that it may harmonize with Proposed Bill No. 1.

This bill further provides that if the defendant demurs to the indictment or information on the grounds that it does not state facts sufficient to constitute a public offense the demurrer must set forth the particulars wherein the indictment or information does not state a public offense.

What is said in connection with Proposed Bill No. 10 applies with equal force to this bill.

It is common practice in our courts for a defendant who is charged with a public offense to file a general demurrer to the information on the grounds that the facts stated therein do not state a public offense. His attorney need not inform the court, either in the demurrer or orally, as to the particular defects in the indictment or information. He often reserves his arguments and his "particulars" until the case is called for trial, knowing that if he can then, and at that late day, convince the court that the general demurrer, as it is usually called, is good, he can get the case dismissed or at least continued until an amended information can be filed, if the defect in the indictment or information is one that can be amended. In the meantime witnesses have been subpoenaed, a jury empaneled, and all preparations made for trial, at great expense to the state. The defendant loses nothing by this gamble. If the trial court overrules his objection on the grounds of insufficient facts stated, he, the defendant, can raise the question in the Supreme Court on appeal, and further, can urge any objections other than those urged in the lower court on his appeal to the Supreme Court—this in the face of the fact that he was not compelled in the first instance and when he filed

his demurrer to explicitly state wherein the information or indictment is insufficient for failure to state facts sufficient to constitute a public offense.

Such procedure is not in harmony with the proper administration of justice, and justice is often delayed and frustrated without reason and with the loss of much time and great expense and injury to society.

BILL NO. 24

A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL SECTION 12036 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, IN RELATION TO PROCEEDINGS ON ACQUITTAL OF DEFENDANT ON THE GROUND OF INSANITY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12036 of the Revised Codes of the State of Montana, of 1921, relating to proceedings on acquittal of defendant upon the grounds of insanity be, and the same is hereby, repealed.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 24

This bill proposes to repeal Section 12036 of the Revised Codes of Montana, which relates to what proceedings shall be had on the acquittal of the defendant on the grounds of insanity.

This Section No. 12036, should be repealed provided Proposed Bills Nos. 25 and 26 should become law.

Reference is hereby made to Proposed Bills Nos. 25 and 26 for reasons why Section 12036 should be repealed.

BILL NO. 25

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PLEA OF INSANITY WHEN JOINED WITH OTHER PLEAS AND HOW THE DEFENDANT SHALL BE TRIED UNDER SUCH PLEA AND PLEAS, AND HOW AND IN WHAT MANNER THE JUDGMENT OR COMMITMENT MAY BE ORDERED IN SUCH CASES, AND PROVIDING HOW AND IN WHAT MANNER A DEFENDANT WHO HAS BEEN COMMITTED TO A STATE HOSPITAL FOR THE INSANE BY REASON OF INSANITY MAY BE RESTORED TO SANITY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. "PLEA OF INSANITY JOINED WITH OTHER PLEAS. When a defendant pleads not guilty by reason of insanity, and also

joins with it another plea or pleas, he shall first be tried as if he had entered such other plea or pleas only, and in such trial he shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury, in the discretion of the court. In such trial the jury shall return a verdict either that the defendant was sane at the time the offense was committed or that he was insane at the time the offense was committed. If the verdict or finding be that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court unless it shall appear to the court that the defendant has fully recovered his sanity shall direct that the defendant be confined in the state hospital for the criminal insane, or if there be no such state hospital, then that he be confined in some other state hospital for the insane; if, however, it shall appear to the court that the defendant has fully recovered his sanity such defendant shall be remanded to the custody of the sheriff until his sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital shall not be released from confinement unless and until the court which committed him, or the district court of the county in which he is confined, shall, after notice and hearing, find and determine that his sanity has been restored. In the event such hearing is held in the county from which the defendant was committed, notice as ordered by the court shall be given to the county attorney of said county. In the event of such hearing is held in the county where the defendant is confined, notice as ordered by the court shall be given to the county attorney of said county and also to the county attorney of the county from which said defendant was committed. Nothing in this section contained shall prevent the transfer of such person from one state hospital to any other state hospital by proper authority."

Section 2. "RESTORATION OF SANITY. A person who has been committed to a state hospital, as provided in Section 1 of this act, may apply to the district court of the county in which he is confined or of the county from which he was sentenced, to be released on the ground that his sanity has been restored. No hearing upon such application shall be allowed a person until he shall have been confined for a period of not less than one year from the date of the order of commitment, and if the finding of the court be adverse to him upon such, or any subsequent, application for release, on the ground that his sanity has not been restored, he shall not be permitted to file a further application until one year has elapsed from the date of hearing upon his last preceding application. In any hearing authorized by this section the burden of proving that his sanity has been restored shall be upon the person applying for such hearing."

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Section 4. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

(If this Act became a law it would be necessary to amend Chapter 87 of the Legislative Assembly of 1925, which amends Section 10728 of the Revised Codes of 1921.)

BILL NO. 26

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO ALIENISTS AND THE APPOINTMENT, PRODUCTION AND EXAMINATION THEREOF WHERE A PLEA OF NOT GUILTY BY REASON OF INSANITY IS ENTERED IN CRIMINAL CASES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. "When a defendant pleads not guilty by reason of insanity the court may, in its discretion, appoint three alienists to examine the defendant and investigate his sanity. It is the duty of the alienists so selected and appointed to examine the defendant and investigate his sanity, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question. Said alienists so appointed by the court shall be allowed such fees as in the discretion of the court seem just and reasonable, having regard to the services rendered by the witnesses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial.

"Nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence as to the sanity of the defendant; where expert witnesses are called by the county attorney in such action, they shall only be entitled to such witness fees as may be allowed by the court.

"Any alienist so appointed by the court may be called by either party to the action or by the court itself, and when so called shall be subject to all legal objections as to competency and bias and as to qualifications as an expert. When called by the court, or by either party to the action, the court may examine the alienists, as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the alienist were a witness for the adverse party. When the alienist is called and examined by the court the parties may cross-examine him in the order directed by the court. When called by either party to the action the adverse party may examine him the same as in the case of any other witness called by such party."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

BILL NO. 27

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11907 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO PLEAS AND THE DIFFERENT KINDS OF PLEAS IN CRIMINAL ACTIONS, AND ALSO TO AMEND SECTION 11908 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO THE PLEAS IN CRIMINAL ACTIONS AND HOW THEY ARE PUT IN AND THEIR FORM."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11907 of the Revised Codes of the State of Montana of 1921, be, and the same is hereby, amended to read as follows:

"Section 11907. PLEAS TO INDICTMENTS AND INFORMATIONS. There are five kinds of pleas to an indictment or information:

1. Guilty
2. Not guilty
3. A former judgment of conviction or acquittal of the offense charged
4. Once in jeopardy
5. Not guilty by reason of insanity.

"A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged, provided that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged."

Section 2. That Section 11908 of the Revised Codes of the State of Montana, of 1921, be, and the same is hereby, amended to read as follows:

"Section 11908. FORM AND MANNER OF PLEADING. Every plea must be oral and entered upon the minutes of the court in substantially the following form:

"1. If the defendant plead guilty; 'The defendant pleads that he is guilty of the offense charged.'

"2. If he plead not guilty: 'The defendant pleads that he is not guilty of the offense charged.'

"3. If he plead a former conviction or acquittal: 'The defendant pleads that he has already been convicted (or acquitted) of the offense charged, by the judgment of the court of.....(naming it), rendered at.....(naming the place), on the .....day of.....'

"4. If he plead once in jeopardy: 'The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court).'

"5. If he plead not guilty by reason of insanity: 'The defendant pleads

that he is not guilty of the offense charged because he was insane at the time that he is alleged to have committed the unlawful act.' "

Section 3. All acts and parts of act in conflict herewith are hereby repealed.

Section 4. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

BILL NO. 28

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11911 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO WHAT MAY BE GIVEN IN EVIDENCE UNDER A PLEA OF NOT GUILTY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11911 of the Revised Codes of the State of Montana, of 1921, in relation to what may be given in evidence under a plea of not guilty be and the same is hereby, amended to read as follows:

"Section 11911. All matters of fact tending to establish a defense, other than those specified in the third, fourth, and fifth sub-divisions of Section 11907 of the Revised Codes of the State of Montana, of 1921, as amended, may be given in evidence under the plea of not guilty."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

BILL NO. 29

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 12020 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO GENERAL VERDICTS IN CRIMINAL CAUSES AND BEING PART OF CHAPTER 27 OF PART II OF THE PENAL CODE OF THE STATE OF MONTANA RELATING TO VERDICTS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12020 of the Revised Codes of the State of Montana, of 1921, relating to general verdicts, and being part of Chapter 27 of Part II of the Penal Code of the State of Montana, be, and the same is hereby, amended to read as follows:

"Section 12020. GENERAL VERDICT. A general verdict upon a plea of not guilty is either 'guilty' or 'not guilty,' which imports a conviction or acquittal of the offense charged in the indictment or information. Upon a plea of a former conviction or acquittal of the same offense, it is either 'for the state' or 'for the defendant.' When the defendant is acquitted on the ground of variance between the indictment or informa-

tion and the proof, the verdict must be 'not guilty by reason of variance between indictment or information and proof'."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTES ON BILLS NOS. 25, 26, 27, 28, AND 29

These bills are grouped for the reason that they all relate to the matter of the defense of insanity and proceedings based thereon. They relate to the plea of insanity when joined with other pleas and how a defendant shall be tried under such plea and pleas, and provide for the procedure in such cases.

Proposed Bills 24, 27, 28, and 29 are amendments respectively to Sections 12036, 11907 and 11908, 11911, and 12020 of the Revised Codes of Montana. These amendments become necessary if Proposed Bills Nos. 25 and 26 become the law in order that each may be in harmony with the others.

It is common knowledge that the defense of insanity has been one of the most serious and troublesome in the administration of the criminal laws in the United States. The abuses of the present system are great. Under a plea of "not guilty" and without any notice to the State that the defense of insanity will be relied upon, defendant has been able to raise the defense upon the trial of the issue as to whether he committed the offense charged. This lack of notice that such defense would be made has very frequently placed the State at a very great disadvantage. An even more serious fault of the present system is that a defendant, when on trial as to whether he committed the offense, is able to bring into the case the whole matter of his sanity at the time of the offense charged. This enables him to submit to the jury great masses of evidence having no bearing upon the question whether the offense was committed. This is frequently made the basis of appeals to the sympathy or prejudice of the jury and even though this is not done, often introduces great confusion into the trial. It not infrequently happens that a jury finds a defendant not guilty, when, in fact, it is convinced that the defendant committed the crime but believes he was insane at the time. Thus persons who are really dangerous to society through suffering from criminal insanity are turned back upon the public and become a menace to society.

Many guilty men have escaped through the avenue of this defense. If a man commits a crime the proper place for him is in prison, and if he was insane when he committed the crime, then he should be confined to some asylum for the balance of his life. A man who commits a crime because of insanity is more dangerous to be at large than the wilful wrongdoer, since if he is released by reason of insanity he may go free and commit another crime. America might follow with profit to society the method pursued in England, where the insane criminal is committed for life, no matter how sane he may become after the commission of the crime or after he has been committed.

Under these proposed bills if the defendant intends to raise the defense of insanity at the time of the commission of the alleged offense, he shall plead "not guilty by reason of insanity." This plea may be joined with other pleas, but one who does not make such plea shall be conclusively deemed to have been sane at the time of the commission of the alleged offense. When the defendant pleads "not guilty by reason of insanity," joining with it any other pleas, he shall first be tried in the regular way as to the issue raised by the other pleas without any question of insanity being raised. In such trial, for example, if defendant pleads "not guilty" and also "not guilty by reason of insanity," he shall first be tried in the regular manner on the plea of "not guilty." If the verdict be in favor of the State, then the issue as to whether defendant was sane at the time the offense was committed shall be promptly tried, either by the same jury or by a new jury in the discretion of the court. If it be found that the defendant is sane, he shall be given the legal sentence. If, on the other hand, it be determined that defendant was insane, he shall be committed to the hospital for the criminal insane, or if such hospital be not yet established, to some other state hospital for the insane. Such commitment shall continue until it be judicially adjudicated that defendant's sanity has been restored. A person so committed, after having been in the hospital for one year, may file an application to have it adjudged that his sanity has been restored. If, on such application, the court finds in his favor, he shall be discharged. If the finding be against him, he may, at the expiration of a year, file a new application.

It is believed that this will obviate practically all the difficulties in the present system. The making of the plea of "not guilty by reason of insanity" will give to the State notice that it must meet this issue. By having the trial on the merits distinct from the trial as to the issue of sanity, the present great confusion will be avoided, the issue will be clean cut and much time will be saved. If the defendant is found not guilty, all of the time, expense and delay now consumed in trying the issue of insanity will be saved. If defendant be found guilty, the issue of his sanity will be tried without any confusion with other matters. Where it is determined that a defendant is criminally insane, he will be committed to an institution. Thus the public will be saved from the constant menace to which it is subjected when insane persons with criminal tendencies are allowed to roam at large. By being in an institution designed for care and treatment of such persons, the insane person will be saved from many menaces to himself and will be given treatment which may result in the restoration of his sanity.

In harmony with this law Section 12036 of the Revised Codes should be repealed and Section 12020 should be amended by eliminating that portion which refers to acquittals because of insanity. Section 11907 and 11908 and 11911 should be amended so that all sections referring to the subject of insanity as a defense may be harmonized.

BILL NO. 30

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO DRUNKENNESS AS BEING NO EXCUSE FOR CRIME AND HOW INSANITY AS A DEFENSE MUST BE PROVEN, AND AMENDING SECTION 10728 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, BEING A PART OF CHAPTER ONE OF THE PENAL CODE OF THE STATE OF MONTANA, OF 1921, ENTITLED, 'DEFINITIONS AND PRELIMINARY PROVISIONS,' AS THE SAME WAS AMENDED BY CHAPTER 87 OF THE LAWS OF THE NINETEENTH LEGISLATIVE ASSEMBLY OF 1925, PASSED AND APPROVED MARCH 10, 1925, AND BY ADDING TO SAID SECTION A SUBDIVISION OR SUB-SECTION TO BE KNOWN AS NO. 2, AND WHICH RELATES TO HOW INSANITY AS A DEFENSE SHALL BE PROVEN."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

That Section 10728 of the Revised Codes of the State of Montana, of 1921, relating to drunkenness being no excuse for crime, as amended by Chapter 87 of the Nineteenth Legislative Assembly of the State of Montana, of 1925, passed and approved March 10, 1925, be, and the same is hereby, amended by adding thereto a subdivision or sub-section to be known as No. 2, which relates to how insanity as a defense shall be proven, and which said Section, as amended, shall read as follows:

"Section 1078. Drunkenness no excuse for crime—when it may be considered—how insanity must be proven.

"1. No act committed by a person while in a state of voluntary intoxication is less criminal by his being in said condition. But, whenever the actual existence of any particular purpose, motive, or intent, is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

"2. When the commission of the act charged as a crime is proven, and the defense sought to be established is the insanity of the defendant, the same must be proven by the defendant by a preponderance of the testimony."

All acts and parts of acts in conflict herewith are hereby repealed.

This Act shall be in full force and effect from and after its passage and approval by the Governor.

NOTE ON BILL NO. 30

This Act proposes to amend Section 10728 of the Revised Codes of Montana, relative to drunkenness being no excuse for crime, as amended by Chapter 87 of the Nineteenth Legislative Assembly of the State of Montana, of 1925, by adding a subdivision or sub-section to be known as No. 2.

This amendment becomes necessary if the bills relating to insanity, referred to in this report, are enacted into laws.

It is the same as Section 10728, as amended, except that the last clause therein is omitted. This clause is omitted in order that there may be no conflict between the subject matter of this section and the acts which are proposed relative to insanity and how the question of insanity shall be tried.

BILL NO. 31

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE INSTRUCTIONS TO THE JURY WITH REFERENCE TO THE OPINIONS OF EXPERT WITNESSES IN CRIMINAL TRIALS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. "When, in any criminal trial or proceeding, the opinion of any expert witness is received in evidence, the court shall instruct the jury substantially as follows:

"Duly qualified experts may give their opinions on questions in controversy at a trial. To assist the jury in deciding such questions, the jury may consider the opinion with the reasons stated therefor, if any, by the expert who gives the opinion. The jury is not bound to accept the opinion of any expert as conclusive, but should give to it the weight to which they shall find it to be entitled. The jury may, however, disregard any such opinion, if it shall be found by them to be unreasonable."

"No further instruction on the subject of opinion evidence need be given."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 31

This is an act relating to instructing a jury with reference to the opinion of expert witnesses in criminal trials. It is intended to simplify the matter of instructing the jury in reference to such witnesses.

In most cases when the opinion of expert witness is received in evidence the jury are at a loss to understand and properly appraise these opinions. They are apt to be confused by the statements of such witnesses and to receive the impression that the opinions of such witnesses are binding upon them, and that they are to be viewed in a different light than the testimony of lay witnesses. A simple instruction from the court, such as this, will tend to clarify in the minds of the jurors the testimony given and aid them in properly appraising such testimony. It will also simplify the duty of the judge in the matter of instructions to the jury. Instead of giving to the jury several instructions upon this phase of the case, one instruction only will have to be given, thus, also, minimizing the chances of error creeping into the trial of the case.

BILL NO. 32

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11845 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO PLEADINGS AND FORMS OF INDICTMENTS OR INFORMATIONS.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11845 of the Revised Codes of the State of Montana, of 1921, relating to pleadings and forms of indictments or information, be, and the same is hereby, amended to read as follows:

"Section 11845. STATEMENT CHARGING OFFENSE. In charging an offense, each count shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some public offense therein specified. Such statement may be made in ordinary and concise language without any technical averments or any allegations of matter not essential to be proved. It may be in the words of the enactment describing the offense or declaring the matter charged to be a public offense, or in any words sufficient to give the accused notice of the offense of which he is charged. In charging larceny it shall be sufficient to allege that the defendant stole the property of another."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 32

This bill proposes to amend Section 11845 of the Revised Codes of Montana relating to the form of indictments and informations. This is another bill intended to simplify pleadings in criminal actions. It is in harmony with the proposals to amend Sections 11874, 11906, 11870, 11852, 11853, 11898, and other sections of our Penal Code.

A great deal of time has been consumed by the courts of this country in the consideration of technical objections to pleadings in criminal causes. It is almost an indisputable fact that not in one case in one thousand has the defendant been in the slightest doubt as to the crime with which he was charged. The trend of modern legislation is towards cutting the Gordian knot by which the trial of criminal cases has been so long fettered.

This bill as well as the others referred to have become the law in other states, and your Committee hopes that Montana will not lag behind in this progression.

BILL NO. 33

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11852 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO THE SUFFICIENCY OF INDICTMENTS OR INFORMATIONS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11852 of the Revised Codes of the State of Montana, of 1921, relating to the sufficiency of indictments or informations, be, and the same is hereby, amended to read as follows:

"Section 11852. SUFFICIENCY OF INDICTMENTS AND INFORMATIONS. The indictment or information is sufficient if it can be understood therefrom:

"1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

"2. If an indictment, that it was found by a grand jury of the county in which the court was held, or in an information, that it was subscribed and presented to the court by the county attorney of the county in which the court was held.

"3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury or county attorney, as the case may be, unknown.

"4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein.

"5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information.

"6. That the act or omission charged as the offense is set forth in ordinary, concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 33

This is an act to amend Section 11852 of the Revised Codes of Montana relating to the sufficiency of indictments and informations. It is in the identical language of Section 11852, except that it omits subdivision 7 of the section for the reason that the subject matter of subdivision 7 is fully covered by the proposed amendment to Section 11845 of the Revised Codes of Montana.

BILL NO. 34

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11804 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO THE AMENDMENT OF INDICTMENTS OR INFORMATIONS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11804 of the Revised Codes of the State of

Montana, of 1921, relating to the amendment of indictments or informations, be, and the same is hereby, amended to read as follows:

"Section 11804. AMENDMENT OF INDICTMENT OR INFORMATION. An indictment or information may be amended by the County Attorney without leave of court, at any time before the defendant pleads. The court may order its amendment for any defect or insufficiency, at any stage of the proceedings; and the trial shall continue as if it had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable continuance, not longer than the ends of justice require, may be granted. If the defect or insufficiency be one that cannot be remedied by amendment, the proceedings shall be dismissed, but the defendant shall not be discharged if the court shall direct the filing of a new information or the submission of the case to the same or a new grand jury."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 34

This bill proposes to amend Section 11804 of the Revised Codes of the State of Montana which relates to the amending of indictments and informations. It proposes to change the present section in order to facilitate such amendments and to provide that no mere defect in an indictment or information shall prevent a trial on its merits if the charge can be stated in such a manner as to avoid a defect in the pleading.

BILL NO. 35

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11596 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO TERMS OF IMPRISONMENT AND WHEN THE SECOND TERM OF IMPRISONMENT SHALL COMMENCE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11596 of the Revised Codes of the State of Montana, of 1921, relating to terms of imprisonment and when the second term of imprisonment shall commence, be, and the same is hereby, amended to read as follows:

"Section 11956. TERMS, SUCCESSIVE AND CONCURRENT. When any person is convicted of two or more crimes, he shall be sentenced separately for each offense and the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be; provided, that in

exceptional cases the judgment, in the discretion of the court, may direct that such terms of imprisonment, or any of them shall run concurrently."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 35

This Act proposes to amend Section 11596, relating to the matter of consecutive or concurrent sentences where a person is convicted of two or more offenses.

The present Section 11596, takes from the Court all power to control the running of sentences. For example, if a person on each of three consecutive days were convicted and immediately sentenced for three separate robberies, such sentences must run concurrently, but if all three offenses were tried and the defendant convicted upon each and sentence pronounced upon all three before being pronounced on each of the three, such sentences run consecutively.

Under the present law, if a man be charged with three separate robberies, if he pleads guilty to all three, or is convicted of all three, and before sentence has been pronounced upon him for any, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be; that is to say, that the sentences must run consecutively. But if he pleads to the first offense and receives a sentence thereon and then pleads to the second and receives a sentence thereon, and then pleads to the third and receives a sentence theron, such sentences must run concurrently.

The ends of justice will be served, if the judge is given the power when a person has been convicted upon one offense and sentenced thereon, to order upon a subsequent conviction of another offense that the sentence upon the second or last trial follow the expiration of the sentence for the offense first tried; in other words, that the sentences run consecutively.

BILL NO. 36

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11964 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, BEING A PART OF CHAPTER 24, OF PART II, OF THE PENAL CODE OF THE STATE OF MONTANA, RELATING TO CHALLENGING THE JURY AND AS TO HOW CHALLENGES SHALL BE TRIED."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11964, of the Revised Codes of the State of Montana, of 1921, being a part of Chapter 24, of Part II, of the Penal

Code, relating to challenging of the jury and how challenges shall be tried, be and the same is hereby, amended to read as follows:

"It shall be the duty of the trial court to examine the prospective jurors to select a fair and impartial jury. He shall permit reasonable examination of prospective jurors by counsel for the State and for the defendant."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 36

This is an Act to amend Section 11964, of the Revised Codes of Montana, relating to challenge to the jury and how challenges may be tried.

This Act, if it becomes a law, will very materially cut down the great amount of time now consumed in the selection of juries and will increase the probability that a fair and impartial jury will be selected. There is no place in the world where anything like the amount of time is consumed in selecting a jury as is common in this country in criminal cases. Days and weeks are sometimes used up and wasted in this way. The selection of a jury in the average criminal trial is largely a gamble between counsel. It is but natural that each side should endeavor to secure jurors who are favorable to that side. The idea should be to select a fair and impartial jury. Neither side is entitled to more.

This Act is designed to make it primarily the duty of the trial court to bring about the selection of a jury. There are, of course, cases in which reasonable examination by counsel should be permitted, and this Act provides for this being done.

BILL NO. 37

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 12000 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO PROCEDURE IN CASES WHERE A JUROR IS UNABLE TO PERFORM HIS DUTIES BY REASON OF SICKNESS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 12000 of the Revised Codes of the State of Montana, of 1921, relating to procedure in cases where a juror is unable to perform his duties, by reason of sickness, be, and the same is hereby, amended to read as follows:

"Section 12000. JURORS' BECOMING UNABLE TO PERFORM DUTIES. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case, or if the juror should die, if any alternate jurors have been selected, one of them shall be drawn by the clerk to take the place of that juror. If, after all alternate jurors have been

made regular jurors, a juror becomes so sick as to be unable to perform his duties and has been discharged by the Court, or if a juror should die, a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 37

This is an amendment to Section 12000 of the Revised Codes of Montana, relating to the subject of procedure where a juror becomes unable to perform his duties because of sickness. The present section provides that in such event he must be discharged and that a new juror may be sworn and the trial begun anew, or that the jury may be discharged and that a new jury be then or afterwards empaneled.

This amendment is in harmony with the intent of Proposed Bill No. 11, relating to alternate jurors, and if the latter bill should become a law then this amendment should also.

BILL NO. 38

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TWO NEW SECTIONS TO CHAPTER 17, PART II, OF THE PENAL CODE OF THE STATE OF MONTANA, RELATING TO THE RULES OF PLEADING AND FORM OF THE INFORMATION AND INDICTMENT, WHICH SAID SECTIONS ARE FOR PROVIDING HOW PREVIOUS CONVICTION OR CONVICTIONS OF A FELONY SHALL BE CHARGED IN THE INFORMATION OR INDICTMENT, AND PROVIDING FOR AMENDING INFORMATIONS AND INDICTMENTS TO CHARGE SUCH PREVIOUS CONVICTION OR CONVICTIONS, AND PROVIDING FOR THE MANNER IN WHICH AND THE PLACE WHERE SUCH CHARGE OF PREVIOUS CONVICTION OR CONVICTIONS SHALL BE TRIED BY THE COURT OR JURY; AND SUCH NEW SECTIONS SHALL BE KNOWN AS AND NUMBERED 11844-A AND 11844-B AND SHALL BE AND BECOME A PART OF THE PENAL CODE OF THE STATE OF MONTANA."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That the following sections, to be known as and numbered 11844-a and 11844-b, be added to Chapter 17, Part II, of the Penal Code of the State of Montana:

"Section 11844-a. PLEADING PRIOR CONVICTIONS. In charging in an indictment or information the fact of a previous conviction of felony it is sufficient to state 'That the defendant, before the commission of the offense charged in this indictment or information, was in (giving the title of the court in which the conviction was had) convicted of a felony.' If more than one previous conviction is charged the date of the judg-

ment upon each conviction may be stated, and all known previous convictions, whether in this state or elsewhere, must be charged."

"Section 11844-b. ADDING CHARGE OF PRIOR CONVICTION. Whenever it shall be discovered that a pending indictment or information does not charge all prior felonies of which the defendant has been convicted either in this state or elsewhere, said indictment or information shall be forthwith amended to charge such prior conviction or convictions, and such amendment may and shall be made upon order of the court, and no action of the grand jury (in case of an indictment) shall be necessary. Defendant shall promptly be rearraigned on such information or indictment as amended and be required to plead thereto. Whenever after sentence, and before the sentence has expired, it shall be discovered that the indictment or information on which defendant was convicted did not charge all felonies of which defendant had theretofore been convicted either in this state or elsewhere, it shall be the duty of the county attorney of the county wherein defendant was sentenced to cause to be filed a supplemental information setting up such prior conviction or convictions. Said supplemental information may be filed either in the county from which defendant was sentenced or in the county in which he is then confined. Defendant shall thereupon be arraigned upon such supplemental information and be required to plead thereto. In whichever county the supplemental information is filed, the county attorney of the county from which defendant was sentenced shall sign the same and prosecute the proceedings. If defendant admits the prior conviction or convictions charged, the court shall resentence him to the sentence which would have been legal if such prior conviction or convictions had been admitted at the time of the defendant's conviction, and such resentence shall operate as of the date of the original sentence. If defendant deny the prior conviction or convictions so charged, the issue shall be tried by a jury, or by the court if a jury be waived. If the issue be found in defendant's favor, such suplemental information shall be dismissed. If the issue be found against defendant, the court shall resentence defendant to the sentence which would have been legal if such prior conviction or convictions had been admitted at the time of defendant's conviction, and such resentence shall operate as of the date of the original sentence."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 38

It is recommended that Sections 11844-a and 11844-b be adopted designed to cover cases where, after the filing of an indictment or information, it is discovered that defendant had previously been convicted of felonies which were not known at the time of the filing of the indictment or information. If the discovery is made before sentence, the pending indictment or information shall be amended upon order of the court and the case proceed as if such prior convictions had been

charged in the original indictment or information. If discovery is not made until after sentence, the statute provides for the filing of a supplemental information. Defendant shall be arraigned thereon and if he admit the prior convictions, shall be resentenced accordingly. If he deny them, the issue shall be tried. If the issue be determined in the defendant's favor, the proceedings shall be dismissed. If the issue be determined against him, he shall be resentenced accordingly.

The justice of this provision seems to require no argument. If a defendant has in fact been convicted of one or more previous felonies, he ought not escape the consequences thereof simply because he has succeeded in concealing them.

BILL NO. 39

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11960 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO GROUND OF CHALLENGE FOR IMPLIED BIAS, SAID SECTION 11960 BEING A PART OF CHAPTER 24, PART II, OF THE PENAL CODE OF THE STATE OF MONTANA, ENTITLED, 'CHALLENGING THE JURY'."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11960 of the Revised Codes of the State of Montana, of 1921, relating to ground of challenge for implied bias, be, and the same is hereby, amended to read as follows:

"Section 11960. GROUND OF CHALLENGE FOR IMPLIED BIAS. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

"1. Consanguinity or relationship to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

"2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, debtor and creditor, to, or being a member of, the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment.

"3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

"4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

"5. Having served on a trial jury which has tried another person for the offense charged.

"6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was discharged without verdict, after the case was submitted to it.

"7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

"8. If the offense charged be punishable with death, if a prospec-

tive juror entertains such conscientious opinions as would preclude his finding the defendant guilty, if the State challenge him on that ground, he must neither be permitted nor compelled to serve as a juror. This challenge shall not be available to the defendant.

"9. The State may also challenge when a prospective juror states he has a belief that the punishment fixed by law is too severe for the offense charged. This challenge shall not be available to the defendant."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 39

Bill No. 39 is aimed to prevent a defendant on trial, charged with first degree murder, from interposing a challenge where the prospective juror states that he entertains conscientious opinions which would preclude his finding the defendant guilty, and in those cases where a prospective juror states that he believes the punishment provided by law is too severe for the offense.

These challenges should be permissible only by the state. Frequently in murder cases where the charge is first degree murder, and where the County Attorney does not expect to obtain a verdict which would carry the death penalty, jurors disqualify themselves by stating either that they have conscientious scruples against the infliction of the death penalty or that the punishment fixed by law is too severe. In murder cases particularly, the defendants frequently gets rid of jurors who state that they have these conscientious scruples, and your prospective juror sometimes states scruples purely for the sake of avoiding jury duty. The additional expense caused a county in the trial of a first degree murder case by reason of the challenge on this ground at the instance of the defendant is considerable. A statement by a prospective juror that he has conscientious scruples, or the punishment fixed by law is too great, really works in favor of a defendant, and he should not be permitted to take advantage of a situation which works to his own benefit.

BILL NO. 40

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 8893 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO WHO ARE EXEMPT FROM JURY DUTY, AND TO REPEAL THAT PORTION ONLY OF SECTION 1401 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, WHICH RELATES TO AND PROVIDES FOR THE EXEMPTION OF EVERY COMMISSIONED OFFICER AND EVERY ENLISTED MAN OF THE NATIONAL GUARD OF MONTANA FROM JURY DUTY, AND ALSO TO REPEAL THAT PORTION ONLY OF SECTION 5144 OF THE REVISED CODES OF MONTANA, OF 1921, WHICH RELATES TO AND PROVIDES FOR THE EXEMPTION FROM JURY DUTY OF MEMBERS OF UNPAID REGULAR ORGANIZED FIRE COMPANIES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 8893 of the Revised Codes of the State of Montana, of 1921, relating to who are exempt from jury duty be, and the same is hereby amended to read as follows:

"Section 8893. WHO ARE EXEMPT FROM JURY DUTY. A person is only exempt from liability to act as a trial juror if he be a practicing physician or surgeon, or if he has within a period of two years served as a trial juror in the court in which he is summoned as such juror.

"The court must discharge a person from serving as a trial juror in either of the following cases:

"When it satisfactorily appears that he is not competent; and,

"When it satisfactorily appears that he is exempt and claims the benefit of such exemption."

Section 2. The provisions of Section 1401 of the Revised Codes of the State of Montana, of 1921, in so far as the same provides for the exemption from jury duty of every commissioned officer and every enlisted man of the National Guard of Montana, are hereby repealed.

Section 3. Section 5144 of the Revised Codes of Montana, of 1921, in so far as the same provides for the exemption from jury duty of members of unpaid regular organized fire companies, is hereby repealed.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Section 5. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 40

This is an amendment to Section 8893 of the Revised Codes of Montana relating to who are exempt from jury duty.

This bill is recommended by the Commission for enactment into law for the reason that under the present law a large number of our best and most useful citizens are exempt from jury duty, and this without any good reason therefor.

Every citizen should, when called upon to do so, give some slight portion at least of his time to the duty of serving in our courts as a juror. Such service is not only a duty he owes to his community, but it is a valuable and worthwhile experience. If some of our best and most widely experienced citizens are exempt from this service our courts and the administration of our laws suffer an incalculable harm.

There is an increasing sentiment throughout the United States among those who give such matters some thought and among those who have had experience with our courts that too many of our citizens shirk this duty, and in some of our cities employers of labor have taken such an interest in this subject that they request the judges who preside in the local courts to not exempt their employees from this duty when they are called thereto.

Much of the criticism of jury trials would be avoided and the results

obtained through such trials would be greatly enhanced if the standard of the quality of those called upon to perform this service were raised. This bill, if enacted into law, will materially aid in bringing about a much desired consummation.

BILL NO. 41

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE INSTRUCTION OF THE COURT IN CIVIL AND CRIMINAL ACTIONS AND PROVIDING THAT, EITHER IN WRITTEN INSTRUCTIONS TO THE JURY AS TO THE LAW OR AFTER ARGUMENT OF COUNSEL, THE JUDGE MAY COMMENT ON THE EVIDENCE AND THE TESTIMONY AND CREDIBILITY OF ANY WITNESS, AND REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT HEREWITH."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. In the trial of all civil and criminal cases the Judge may, either in his written instructions to the jury as to the law applicable to the case, or after the argument of counsel, make such comment on the evidence and the testimony and credibility of any witness as in his opinion the interests of justice may require, but such comment shall be accompanied by a statement of the Judge that the jury are the exclusive judges of the facts and that they are not bound by his opinion thereon. If comment on the evidence is made by the Judge after the argument of counsel, it may be written or oral, but if oral, there shall be a stenographic report made; and, in either case, it shall be deemed excepted to by the parties.

Section 2. This act is to be construed as supplemental to, and in addition to, Sections 9349 and 11969 of the Revised Codes of Montana, of 1921.

Section 3. All acts and parts of acts in conflict herewith are hereby repealed.

Section 4. This Act shall take effect upon its passage and approval.

NOTE ON BILL NO. 41

This bill authorizes a judge, in his discretion, in a civil or criminal case, to comment on the evidence and the credibility of any witness, either in his written instructions as to the law or after the argument of counsel. It provides that, if the judge comments on the evidence, he shall inform the jury that they are the exclusive judges of the facts and that they are not bound by his opinion. It is not as broad as many laws of a similar nature which have been proposed by other commissions, in that it specifies the time when comment may be made. The bill does not vitiate our present law requiring judges to instruct in writing as to the law applicable to the case. It merely supplements that law.

The wisdom of giving judges in the state courts the power to comment on evidence has often been questioned. Lawyers differ on this subject. However, the American Bar Association, the American Law

Institute, and practically every commission on law reform has endorsed such a provision. The National Economic League, which is composed of representative men throughout the United States, favors such a bill. It is their judgment, after carefully weighing all arguments, that a bill of this nature will materially improve the administration of justice. Federal judges, ever since the commencement of our government, have had the power to comment on evidence at any stage of the trial, and we believe that we can safely say that it has not been often abused. Experience has shown that they have rendered invaluable aid in meting out justice in federal courts. Such being the case, there seems to be no legal reason why judges of State courts should not have this power in a limited way. Abuse of the privilege would soon bring reproach by the people.

In view of the many endorsements of a bill of this character, and after giving the matter serious consideration, the Commission offers the foregoing bill.

BILL NO. 42

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 8901 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO THE TIME OF SERVICE OF REGULAR JURORS, AND PROVIDING THAT TRIAL JURORS DRAWN BEFORE THE RETURN OF A NEW JURY LIST SHALL CONTINUE TO SERVE UNTIL DISCHARGED BY THE COURT."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 8901 of the Revised Codes of the State of Montana, of 1921, be and the same is hereby, amended to read as follows:

"The persons whose names are so returned are known as regular jurors, and must serve for one year, and until other persons are selected and returned; provided, however, that if jurors are drawn before the selection and return of the new jury list as provided in Section 8896, et seq., R.C.M. 1921, and thereafter a new jury list is returned, they shall continue to serve as jurors until discharged by the Court, and the fact that a new jury list has been returned shall not affect their status as jurors."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon its passage and its approval.

NOTE ON BILL NO. 42

New jury lists are made up on the second Tuesday of each year. If a jury is called prior to that time and is not actually serving before the new jury list is returned, they must be discharged under the present law. This amendment avoids the necessity of discharging a panel, even if a new jury list in the meantime is returned. The present law interferes with the dispatch of business in the Courts of this State and the amendment is offered to remedy the situation.

BILL NO. 43

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A STATE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION AND DEFINING ITS POWERS AND DUTIES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. There is hereby created under the authority and supervision of the Warden of the Montana State Prison a State Bureau of Criminal Identification and Investigation to be located at Deer Lodge, Montana. Upon the taking effect of this Act, the Warden of the Montana State Prison, with the approval of the Governor, shall appoint a well qualified person as Superintendent of said Bureau.

Section 2. The Bureau shall be supplied with such furniture, fixtures, apparatus and materials as may be necessary for the collection, filing and preservation of all criminal records filed with the Bureau.

Section 3. The Superintendent shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of felony within the State, and of all well-known and habitual criminals from wherever procurable, and it shall be the duty of the person in charge of any State institution to furnish any such material to the Superintendent of the State Bureau of Criminal Identification upon request of the Superintendent. The Superintendent shall cooperate with and assist Sheriffs, Chiefs of Police and other law officers in the establishment of a complete State system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on charges of felony. He shall also file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory, penitentiary, for the violation of State laws, and such other information as he may receive from law enforcement officials of the State and its subdivisions.

Section 4. It is hereby made the duty of the Sheriffs of the several counties of the State, the Chiefs of Police of the cities and Marshals of villages therein immediately upon the arrest of any person for any felony, to take his fingerprints according to the fingerprint system of identification on the forms furnished by the Superintendent, and forward the same, together with such other description as may be required and with the history of the offense committed, to the Bureau to be classified and filed, but should any accused be found not guilty of the offense charged, then said fingerprints and description shall be given to the accused upon his request. And the Superintendent of the State Bureau of Criminal Identification shall report any dereliction in the performance of his duty by any Sheriff, Chief of Police, or Marshal, or any dereliction in the duty imposed upon any person having charge of any State institution as provided in Section 3 of this Act, to the Governor, who shall make immediate investigation thereof, and upon the order of the Governor the proper disbursing officer shall not issue any salary voucher to any said official found by the Governor to be derelict in the perform-

ance of the duties provided by this enactment until such dereliction has been corrected. The Superintendent shall compare the description received with those already on file in the Bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact; and in order to facilitate the work of identification, the name or names under which each person whose identification is thus filed is known, shall be alphabetically indexed by the Superintendent.

The provisions of this section shall not apply to violators of city ordinances or those arrested for misdemeanors, unless the officers have reason to believe that he is an old offender, or where it is deemed advisable for the purpose of subsequent identification.

Section 5. It shall be the duty of the Superintendent to co-operate with the Bureaus in other States, and with the National Bureau of the Department of Justice in Washington to develop and carry on a complete interstate, national and international system of criminal identification and investigation.

Section 6. It shall be the duty of the Superintendent to afford assistance and, when practicable, instruction to Sheriffs, Chiefs of Police and other law officers in the establishment of efficient local bureaus of identification in their district and in making them proficient in procuring fingerprint records

Section 7. A person with a known criminal record shall not be permitted access to the files of the Bureau.

Section 8. The State Legislature shall make the necessary appropriation for the purpose of paying the expenses necessary to carry into effect and operation the said Bureau and to maintain and operate the same.

Section 9. Should any section or provision of this Act be decided by the Courts to be invalid, the same shall not effect the validity of the Act as a whole or any part thereof, other than the part so decided to be invalid.

Section 10. All acts and parts of acts in conflict herewith are hereby repealed.

Section 11. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTE ON BILL NO. 43

This is an Act to create a State Bureau of Criminal Identification and Investigation and defining its powers and duties.

This Act is esteemed by your Commission as one of great importance and should be enacted into law.

The fingerprint system, so called, is now in common use throughout the United States as a means for the detection of crime and has become one of the most efficient and certain means for the detection, arrest and conviction of those who commit offenses of our laws. Bureaus such as proposed to be established by this Act have been established and are maintained in a number of the States of the United States, and their establishment and maintenance has been abundantly

justified by the results obtained. The cost of maintaining these bureaus has been and is of slight importance compared with the benefits resulting to society in its fight against crime and criminals. Those who have had experience with the fingerprint system are enthusiastic and unstinted in their praise of it.

BILL NO. 44

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 11844 OF THE REVISED CODES OF THE STATE OF MONTANA, OF 1921, RELATING TO THE FORM OF INDICTMENT AND INFORMATION, SAID SECTION 11844 BEING A PART OF CHAPTER 17, PART II, OF THE PENAL CODE OF THE STATE OF MONTANA, ENTITLED, 'RULES OF PLEADINGS AND FORMS OF INFORMATION AND INDICTMENT'."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. That Section 11844 of the Revised Codes of the State of Montana, of 1921, relating to the form of indictment and information, be, and the same is hereby, amended to read as follows:

Section 11844. FORM OF INDICTMENT AND INFORMATION. It may be substantially in the following form: The State of Montana against A. B. In the District Court of the..... Judicial District of the State of Montana, in and for the County of....., the..... day of....., A.D. 19..... A. B. is accused by the grand jury of the County of..... by this indictment (or by the county attorney by this information) of the crime of a felony (or misdemeanor), to-wit: (Giving name of the crime, as murder, burglary, etc.) in that on or about the.....day of....., 19....., in the County of....., State of Montana, he (here insert statement of act or ommission, as for example, 'murdered C. D.')."

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and its approval by the Governor.

BILL NO. 45

JUVENILE COURT PROCEDURE ACT

ENACTING CLAUSE:

Section 1 Purpose and basic principle.
2 Definitions.
3 Courts—Jurisdiction—Records.
4 Jurisdiction.
5 Designation of Judge.
6 Probation Officers—Appointment—Salaries—Duties.

7 Bond of chief probation officer.
8 Duties and powers of the probation department.
9 Procedure on arrest of juvenile delinquents—Detention—Jurisdiction of courts.
10 Physical and mental examination and treatment.
11 Place of detention.
12 Juvenile Improvement Committee.
13 Procedure in children's cases. Duty of persons having information to file petition.
14 Citation; Notice; Custody of the child.
15 Service of Citation; Process; Notice; Traveling expenses.
16 Failure to obey citation; Warrant.
17 Release of children taken into custody.
18 Transfer from other courts.
19 Hearing; Judgment.
20 Trial.
21 Rules.
22 Time and place of trial.
23 Court sessions; Quarters.
24 Appointment of Guardians.
25 Selection of Custodial Agency.
26 Support of child committed to a custodial agency.
27 County Attorney to prosecute.
28 Costs, Expenses, Witness Fees, Etc.
29 Certain provisions of code of civil procedure applicable.
30 Contempt.
31 Form of commitment to state industrial school or state vocational school for girls.
32 Release on probation, suspended sentence, modification and revocation of sentences and orders.
33 Penalty for improper and negligent training of children.
34 Suspension of Sentence—Bond.
35 Forfeiture of Bond—Execution of sentence.
36 Citation and judgment against surety bond.
37 County commissioners authorized to carry out act—detention Home—Superintendent and Matron.
38 Co-operation.
39 Construction and purpose of act.
40 Other state institutions not affected.
41 Prior acts excepted from repeal.
42 Constitutionality.
43 Laws repealed.
44 Time of taking effect.

A BILL FOR AN ACT ENTITLED: "An Act providing for Juvenile Court and the Procedure Therein, providing for the appointment of probation officers, outlining their duties and specifying their compensation; defining juvenile delinquent persons and a delinquent child; providing for a lawful method of procedure against juvenile delinquents, their parents

and guardians; specifying places for their temporary and permanent detention and the compensation for their care; providing for time and place of trial; providing methods and means to carry the provisions of this Act into effect. Repealing Chapter 51, Part II, of the Penal Code of the Revised Codes of Montana, of 1921, including Section 12280 as amended by Section 1, Chapter 52, of the Laws of 1923, relating to proceedings against delinquent children and juvenile delinquent persons.

PURPOSE AND BASIC PRINCIPLE OF ACT.

Section 1. PURPOSE AND BASIC PRINCIPLE. The purpose of this Act is to secure for each child under its jurisdiction such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the State; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents.

The principle is hereby recognized that children under the jurisdiction of the Court are wards of the State, subject to the discipline and entitled to the protection of the State, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them.

Section 2. DEFINITIONS. 1. Whenever the words "the Court" are used in this Act, they mean the District Court.

The words "the Judge" mean the Judge of said Court.

The word "child" means a person less than eighteen years of age.

The word "adult" means a person eighteen years of age or older.

The singular shall be construed to include the plural, the plural the singular and the masculine the feminine, when consistent with the intent of the Act.

2. The words "delinquent child" include:

(a) A child who has violated any law of the State or any ordinance or regulation of a subdivision of the State.

(b) A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian.

(c) A child who is habitually truant from school or home.

(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or others.

Section 3. COURTS — JURISDICTION — RECORDS. The District Courts of the several counties of this State shall have jurisdiction of all cases coming within the terms and provisions of this Act.

A special record book or books shall be kept by the Clerk of the said Court in each county, who shall be also the clerk in attendance at all hearings under this Act, to be known as the Juvenile Delinquent Record, and the docket or calendar of the Court upon which there shall appear the case or cases, under the provisions of this Act shall be known as the Juvenile Docket. Such records shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parent or other authorized representative of the person concerned, and, in the discretion of the Court, by other persons having a legitimate interest.

Section 4. JURISDICTION. The Court shall have exclusive original jurisdiction in proceedings:

(a) Concerning any child residing within the county who is delinquent.

(b) Concerning any person residing within the county charged with having violated any law of the State or ordinance of any city or town prior to having become eighteen years of age.

(c) To determine the custody or guardianship of any child residing within the county, and who may be a delinquent child as provided in this Act.

When jurisdiction shall have been obtained by the Court in the case of any child, such child shall continue for the purposes of this Act under the jurisdiction of the Court until he becomes twenty-one years of age, unless discharged prior thereto, except when a child is committed to a state institution, in which event, the laws governing the control of inmates of such institution shall control.

JUDGES; APPOINTMENT OF PROBATION OFFICERS; DUTIES.

Section 5. DESIGNATION OF JUDGE. In districts where there are more than one judge, one of the judges shall be designated to act as the judge who shall hear all proceedings under this Act; provided, that in districts where judges are required to travel from one county to another, either one of the judges may act.

Section 6. PROBATION OFFICERS—APPOINTMENT—SALARIES —DUTIES. In each judicial district of the State of Montana, the judge or judges thereof may appoint one discreet person, of good moral character, who shall be known as the Chief Probation officer of such district, and who shall hold his office during the pleasure of the Court, and who shall receive for his or her services such sum as shall be specified upon appointment, not exceeding the sum of $..... per annum, to be paid, however, upon a per diem basis for the time actually and necessarily employed in performing the duties of the office, provided, that in districts having a population of 25,000 or more, the Chief Probation officer in the discretion of the Court may be paid a regular full-time monthly salary; or the judge, or judges of such district may, in their discretion, appoint a chief probation officer for each county of such district, at an annual compensation to be fixed by the Court, not exceeding $.....per annum, to be paid upon a per diem basis, and to hold appointment during the pleasure of the Court; or the judge or judges of said county may, in their discretion, in lieu of making the appointment or appointments hereinbefore provided for, designate the Sheriff of any county, or any police officer of any city, or any other person as the Chief Probation officer of said county, to act in cases arising under the provisions of this Act, which said officer shall receive no compensation for the performance of his duties, except that he shall be allowed and may collect the usual fees, mileage or expenses allowed by law to sheriffs and other police officers in performing the duties of their office. Provided, however, that in all cases where such police officers act under the provisions of this statute the Court or judge may allow the said

officer his actual traveling expenses in lieu of mileage, where the mileage provided by statute, in the opinion of the judge, shall not be equal to the actual and reasonably necessary traveling expenses of such officer in performing any duty under this Act. Claims for compensation by any such officer shall be approved by the judge and acted upon by the Board of County Commissioners of such county as in other cases of claims against the county.

That in every judicial district of the State of Montana, having a population in excess of.....inhabitants, the judge or judges thereof having jurisdiction, if in their opinion the circumstances require, may appoint other persons as deputy probation officers, who shall receive not to exceed $.....per month each, on a per diem basis for time actually engaged, to serve at the will of the Court as above set forth, and provided that said judge or judges of the District Court may appoint as probation officers such other discreet persons of good moral character as are willing to serve without conpensation. It shall be the duty of the Clerk of the District Court, immediately upon the appointment of a probation officer, to notify the courts and magistrates of any county in which the said officer is appointed, giving them the names and post-office addresses of such officers. The duties of said probation officer or officers shall be such as hereinafter prescribed.

Section 7. BOND OF CHIEF PROBATION OFFICER. In counties of over thirty thousand population, the Chief Probation officer shall be required to furnish to the State of Montana a bond in the sum of five thousand dollars for the faithful performance of his duties; in counties of less than thirty thousand population, the Chief Probation officer shall furnish to the State of Montana a bond in the sum of two thousand dollars for the faithful performance of his duties. Provided, however, that when the Probation Officer of any county is a peace officer thereof, his official bond as such peace officer shall be held to cover any liability by reason of his acting as a probation officer. Probation officers serving without compensation shall not be required to furnish bonds.

Section 8. DUTIES AND POWERS OF THE PROBATION DEPARTMENT. In all cases where salaried probation officers are appointed, the Chief Probation officer in each county, under the direction of the judge shall have charge of the work of the probation department. The probation department shall make such investigations as the Court or County Attorney may direct, keep a written record of such investigations and submit the same to the judge or deal with them as he may direct. Upon the placing of any person on probation, the department shall furnish to him a written statement of the conditions of probation and shall instruct him regarding them. The department shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and to bring about improvement in their conduct and condition. The department shall keep full records of its work; shall keep accurate and complete accounts of money collected from persons under its supervision, shall give receipt therefor and shall make reports thereon as the judge may direct.

Probation officers for the purposes of this Act shall have the powers of police officers.

Where there is no regular salaried probation officer, peace officers performing duties under this Act shall make such reports to the judge or Court as may be required by the said Court.

Section 9. PROCEDURE ON ARREST OF JUVENILE DELINQUENTS—DETENTION—JURISDICTION OF COURTS. When any child under eighteen years of age is taken into custody, or arrested under the provisions of this chapter, such child shall be taken directly before the District Court, or, if the District Court is not then in session in said county, it may be taken before a Justice of the Peace or Police Magistrate, who shall at once notify the Chief Probation officer of the county, who shall make investigation of such case as in other cases where complaint has been made or petition duly filed and after investigation, as herein provided, by the said Chief Probation officer, then the Justice of the Peace or Police Magistrate shall act as a committing and examining magistrate only, and it shall be his duty to proceed with the hearing thereof, after granting to the child, or such person as may be representing it, reasonable opportunity to obtain counsel, if counsel be desired for the accused child, and as soon as the said accused child can procure its witnesses. Provided, that nothing herein shall be construed as prohibiting the officer arresting or taking into custody such child from detaining such child on order of such Court or such Justice of the Peace, in the county or city jail, in a cell or room especially prepared for that purpose, and separate from any adult prisoners detained in such jail, except that male and female children shall not be detained in the same cell or room, until such child can be taken before the Court or Magistrate as herein provided. In case the examining magistrate hold the child for trial in the District Court, it shall be the duty of the Magistrate to transfer the case to said District Court and the Probation Officer having the child in charge shall take the child before the said District Court, and the said District Court shall proceed to hear and dispose of the case in the same manner as if said child had been brought before such Court upon petition originally filed as hereinbefore provided; or, when necessary, when the delinquency charged would otherwise constitute a felony, may direct such child to be kept in proper custody until investigation. If it is charged that a child before the Court has committed an offense which would amount to a felony in the case of an adult, and the child is 16 years of age or older, and in case of homicide in any degree, the judge, after full investigation, and if he shall deem it for the best interests of the State, in its discretion, may grant leave to the County Attorney to file an information against the said child the same as if he were an adult; and he shall thereafter be proceeded against upon such information in the same manner as an adult, as provided in the penal statutes of Montana; provided, that nothing herein shall be construed to confer jurisdiction upon any Justice of the Peace or Police Court to try any case against any child under eighteen years of age.

Section 10. PHYSICAL AND MENTAL EXAMINATION AND

TREATMENT. The Court may cause any person coming under its jurisdiction to be examined by a physician, psychiatrist or psychologist, appointed by the Court.

Whenever a child concerning whom a petition has been filed appears to be in need of medical or surgical care, the Court may order the parent, guardian or custodian to provide treatment for such child in a hospital or otherwise. If such parent, guardian or custodian fails to provide such care the Court may, after due notice, enter an order therefor and the expense thereof, when approved by the Court, shall be a charge upon the county; but the Court may adjudge that the person or persons having the duty under the law to support such child pay part or all of the expenses of such treatment in the manner provided in Section 26 of this Act.

If it shall appear that any child concerning whom a petition has been filed is mentally defective or mentally disordered, the Court, before committing him to an institution, shall cause such child to be examined by two qualified physicians, and on their written statement that such child is mentally defective or mentally disordered, the Court may commit such child to an appropriate institution authorized by law to receive and care for such children. The parent, guardian or custodian shall be given due notice of any proceedings hereunder. This provision is supplemental to and does not repeal any provisions of the acts relating to the Montana School for the Deaf and Blind or Montana State Hospital for the insane.

Section 11. PLACE OF DETENTION. Provision may be made for the temporary detention of children in a detention home to be conducted as an agency of the Court or the Court may arrange for the boarding of such children temporarily in private homes, subject to the supervision of the Court, or may arrange with any incorporated institution or agency, to receive for temporary care children within the jurisdiction of the Court.

In case the Court shall arrange for the board of children temporarily detained in private homes or institutions a reasonable sum to be fixed by the Court for the board of such children shall be paid by the county.

Section 12. JUVENILE IMPROVEMENT COMMITTEE. In every county of this State, the judge having jurisdiction may in his discretion appoint a committee, willing to act without compensation, composed of seven reputable citizens of both sexes, which committee shall be designated as a Juvenile Improvement Committee; which committee, if so appointed, shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the Juvenile Department of the Court, and shall act as a supervisory committee of the Detention Home, if there is one in the county.

Section 13. PROCEDURE IN CHILDREN'S CASES. DUTY OF PERSONS HAVING INFORMATION TO FILE PETITION. It shall be the duty of any County Attorney or peace officer having information that any child is a delinquent child to file a petition against such child with the Clerk of the Court. Any person having such information may file such petition upon leave of the Court.

The petition shall be verified, alleging briefly the facts which bring

said child within the provisions of this Act, and stating the name, age and residence (1) of the child; (2) of his parent; (3) of his legal guardian, if there be one; (4) of the person or persons having custody or control of the child, and (5) of the nearest known relative, if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner the petition shall so state.

Section 14. CITATION; NOTICE; CUSTODY OF THE CHILD. After a petition shall have been filed and after such further investigation as the Court may direct, unless the parties hereinafter named shall voluntarily appear, the Court may issue a citation reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the Court at a time and place stated, and make oral or written answer to the petition. If the person so summoned shall be other than the parent or guardian of the child, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing, except when waived. Citation or subpoena may be issued requiring the appearance of any other person whose presence, in the opinion of the judge is necessary.

If it appears that the child is in such condition or surroundings that his welfare required that his custody be immediately assumed by the Court, the judge may cause to be endorsed upon the citation an order that the officer serving the same shall at once take the child into custody.

Section 15. SERVICE OF CITATION; PROCESS; NOTICE; TRAVELING EXPENSES. Service of citation shall be made personally by delivery of copy thereof to each of the persons summoned, and by service at the same time of a copy of the petition; provided, that if the judge is satisfied that it is impracticable to personally serve such citation or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if service is effected at any reasonable time before the time fixed in the citation for the return thereof.

Service of citation, process or notice required by this Act may be made by any suitable person under the direction of the Court. The judge may in its discretion authorize the payment of necessary traveling expenses incurred by any person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this Act, such expenses in no case to exceed the amount now allowed by law to witnesses, and such expenses when approved by the judge shall be a charge upon the county.

Section 16. FAILURE TO OBEY CITATION; WARRANT. If any person summoned or cited as herein provided shall fail without reasonable care to appear and obey said citation, he may be proceeded against for contempt of court. In case the citation cannot be served or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual or the welfare of the child requires that he shall be brought forthwith into the

custody of the Court, a warrant may be issued against the parent or guardian or against the child himself.

Section 17. RELEASE OF CHILDREN TAKEN INTO CUSTODY. Whenever any officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the Court, accept the written promise of the parent, guardian or custodian to bring the child into the Court at the time fixed. Thereupon such child may be released to the custody of the parent, guardian or custodian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the Court, or taken immediately to the Court or to the place of detention designated by the Court, and the Court may make a general order designating such place of detention, and the officer taking him shall immediately bring the child to Court and file a petition against him.

In the case of any child whose custody has been assumed by the court and pending the final disposition of the case, the child may be released in the custody of a parent, guardian or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as shall be designated by the court, subject to further order.

Nothing in this act shall be construed as forbidding any peace officer, police officer or probation officer from immediately taking into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare, unless immediate action is taken. In every such case the officer taking the child into custody shall immediately report the facts to the court and the case shall then be proceeded with as provided in this act.

The court, or the committing magistrate, if the district court is not in session in the county, may in its or his discretion as a condition to the release of said child from custody, require the parent or other custodian to furnish a bond, with sufficient sureties, for the appearance of the child in the court in which the proceeding may be prosecuted; and for that purpose committing magistrates may require bonds for the appearance of the child in the district court, as may be required by the orders of that court. Such bonds, in either the district court or a police or justice court, may contain a provision to the effect that if the child shall commit an offense against any law or ordinance of the state or a municipality thereof, prior to the trial of the proceedings to be conducted in connection with such child, the principal, together with the sureties will pay to the County (or State) the face amount of the said bond.

Section 18. TRANSFER FROM OTHER COURTS. If during the pendency of a criminal, or quasi-criminal charge against any person in any other court, it shall be ascertained that said person was under the age of eighteen years at the time of committing the alleged offense, it shall be the duty of such court to transfer such case immediately, to-

gether with all the papers, documents and testimony connected therewith, to the district court. The court making such transfer shall order the child to be taken forthwith to the place of detention designated by the district court or to that court itself, or release such child in the custody of some suitable person to appear before the district court at a time designated. The district court shall thereupon proceed to hear and dispose of such case in the same manner as if it had been instituted in that court in the first instance.

Section 19. HEARING; JUDGMENT. The court may conduct the hearing in an informal manner, and may adjourn the hearing from time to time.

If the court shall find that the child is delinquent, or otherwise within the provisions of this act, it may by order duly entered proceed as follows:

1. Place the child on probation or under supervision of his own home or in the custory of a relative or other fit person, upon such terms as the court shall determine;

2. Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the State Bureau of Child Protection and authorized to care for children or to place them in suitable family homes;

3. Make such further disposition as the court may deem to be for the best interest of the child, except as herein otherwise provided.

No adjudication upon the status of any child in the jurisdiction of the court under this act shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of a crime in any court, except as provided in Section 9 of this act. The disposition of a child or any evidence given in the court shall not be admissable as evidence against the child in any case or proceeding in any court, except in any subsequent proceedings under this act, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

Whenever the court shall commit a child to any institution or agency it shall transmit with the order of commitment a summary of its information concerning such child.

Section 20. TRIAL. The court shall hear and determine all cases of children arising under the provisions of this act without a jury.

Section 21. RULES. The court shall have power to frame and publish rules of procedure and for the conduct of officers and employees of the court.

Section 22. TIME AND PLACE OF TRIAL. If the persons summoned or cited, as hereinbefore provided, fail to appear or answer, or to otherwise attack the proceedings, or admit the truth of the allegations of the petition, or consent to an immediate trial, the court may immediately proceed to hear and determine the facts in connection with the allegations of the petition; but if the allegations of the petition are

denied, the court must set the case for trial at as early a date as practicable, to meet the convenience of parties and counsel. In no case may a child be committed to other care than that of its parents or guardians, except after a full hearing upon the facts, in the presence of such child.

All trials of any person complained of under this act shall be in the county in which any child shall be alleged to have been a delinquent child; unless a change of place of trial be had as is provided by law for a change of venue in a civil case.

Section 23. COURT SESSIONS; QUARTERS. In the hearing of any case the general public shall be excluded and only such persons admitted as have a direct interest in the case. All cases involving children shall be heard separately and apart from the trial of cases against adults.

No newspaper shall give the name of any child or parent or guardian in reporting any proceedings held under the provisions of this act.

Section 24. APPOINTMENT OF GUARDIANS. Whenever in the course of a proceeding instituted under this act when any child shall be found delinquent, it shall appear to the court that the welfare of such child will be promoted by the appointment of a guardian of its person, the court shall have jurisdiction to make such appointment. The court shall cause a summons to be issued and served upon the parents of such child, if they can be found with the exercise of reasonable diligence, in such manner and within such time prior to the hearing as the court may deem reasonable. In the appointment of such guardian the court shall be governed by the provisions of law relating to the appointment of guardians as set forth in the Code of Civil Procedure. In a case arising under this act the court may determine whether the father or mother or other person shall have the custody and control of said child.

Section 25. SELECTION OF CUSTODIAL AGENCY. In placing a child under any guardianship or custody other than that of its parent, or of a public institution, the court shall, when practicable, select a person, or an institution or agency governed by persons of like religious faith as that of the parents of such child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertained, then of either of the parents.

Section 26. SUPPORT OF CHILD COMMITTED TO A CUSTODIAL AGENCY. Whenever a child is committed by the court to custody other than that of its parent and no provision is otherwise made by law for the support of such child, compensation for the care of such child, when approved by order of the court, shall be a charge upon the county. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge that such parent shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and if such parent shall wilfully fail or refuse to pay such sum he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or by civil action therefor.

Section 27. COUNTY ATTORNEY TO PROSECUTE. It shall be the duty of the county attorney to prosecute and conduct the trial of all persons charged with violating any of the provisions of this act.

Section 28. COSTS, EXPENSES, WITNESS FEES, ETC. In all cases brought under the provisions of this Act, process shall be available to parties, subpoenaes issued and served as in criminal cases, and where not otherwise provided by law, officers and witnesses shall receive the same fees and mileage as are allowed in criminal cases, for performing any duty imposed by this Act or order of court; which, when not otherwise provided by law shall be a charge against the county.

Section 29. CERTAIN PROVISIONS OF CODE OF CIVIL PROCEDURE APPLICABLE. The provisions of the Code of Civil Procedure of this state relating to appeals, motions for new trials, allowance and signing of bills of exceptions shall apply to this act, and from the judgment of the court or judge under this act, appeals may be prosecuted as in equity cases.

Section 30. CONTEMPT. Any person who wilfully violates, neglects or refuses to obey or perform any order of the court may be proceeded against for contempt, or may be proceeded against as may otherwise be provided by statute.

Section 31. FORM OF COMMITMENT TO STATE INDUSTRIAL SCHOOL OR STATE VOCATIONAL SCHOOL FOR GIRLS. Whenever under any of the provisions of this chapter a district court or judge thereof shall order any delinquent child or juvenile delinquent person committed to the Montana State Industrial School, or the State Vocational School for Girls, the form of commitment shall be that prescribed in Section 12503 or Section 12536 of this Code, as the case may be.

Section 32. RELEASE ON PROBATION, SUSPENDED SENTENCE, MODIFICATION AND REVOCATION OF SENTENCES AND ORDERS. When any child is released on probation by the judge of said court, or when any sentence is suspended by the judge of said court, the person so under probation or as to whom sentence has been suspended shall be required to make such reports from time to time as may be required by the judge of said court, and the judge of said court may likewise require parents, guardians or other persons having custody of children who have been admitted to probation, or as to whom sentence has been suspended, to make reports from time to time as may be required by the judge of said court at the time of admitting such child to probation or at the time of suspending the sentence. A failure on the part of the parent, guardian or other person having custody of children who have been admitted to probation, or as to whom sentence has been suspended, to make reports as so required may be treated as a contempt of court and the parent, guardian or other persons punished by the judge as in other cases of contempt.

The court may also, in proper cases, withhold judgment for a definite or indefinite period and may impose conditions for withholding sentence or suspending sentence and may revoke, modify, or annul any sentence, order or condition imposed by it; provided, that this provision

shall not apply to a person committed by the court to the State Industrial School or the State Vocational School for Girls, and actually within the custody of either thereof, as to whom the general laws governing inmates of such institutions shall control.

Section 33. PENALTY FOR IMPROPER AND NEGLIGENT TRAINING OF CHILDREN. Any parent or parents, legal guardian, or other person who shall encourage, wilfully cause or contribute to, or through negligence in the care, custody, guidance, education, maintenance, or direction of any child under eighteen years of age, cause or permit such child to violate any law of this state, or the ordinance or ordinances of any city of this state, or to be or become incorrigible, or to knowingly associate with thieves, vicious or immoral persons; or to grow up in idleness or crime, or to knowingly enter a house of prostitution; or to knowingly visit or patronize any place, house, or apartment building where any gambling device is or gambling devices are or shall be operated or run, or where any gambling is done or conducted, or to patronize or visit any saloon or saloons, or dram shop or dram shops, or other place where intoxicating liquors are sold, or to patronize or visit any public poolroom or poolrooms, or bucket-shop, or to wander about the streets of any town or city in the night-time, without being on lawful business or occupation, or to habitually wander about or visit any railroad yards or tracks, or to jump or hook on to any moving train or to enter any car or engines, without lawful authority; to habitually use any vile, obscene, vulgar, profane, or indecent language, or to be guilty of immoral conduct in any public place, or about any schoolhouse or grounds, or keep or permit it in or about any saloon or place where spirituous liquors or intoxicating liquors are sold or handled, or in any gambling house or place where gambling is practiced, or in a house of ill-fame or prostitution; or to become addicted to the use of spirituous and intoxicating liquors not for medicinal purposes prescribed by a physician; shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be fined in a sum not less than ten dollars and not to exceed one thousand dollars, or imprisonment in the county jail for a period not exceeding nine months, or by both such fine and imprisonment.

Section 34. SUSPENSION OF SENTENCE—BOND. The court may suspend any sentence for the violation of the provisions of the preceding section, or release any person sentenced under this act from custody upon condition that such person shall furnish a good and sufficient bond or undertaking to the State of Montana, in such penal sum, not to exceed $..... as the court shall determine, upon conditions to be prescribed or imposed by the court, as seem most calculated to remove the cause of such delinquency of the child or children, and while such conditions are accepted and complied with by such persons, such sentence may, in the discretion of the court, remain suspended, and such persons shall be considered on probation in said court; and in case a bond is given as provided herein the conditions prescribed by the court may be made a part of the terms and conditions of such bond.

Section 35. FORFEITURE OF BOND—EXECUTION OF SENTENCE. Upon the failure of any person to comply with the terms and conditions of such bond, or of the conditions imposed by the court, such bond or the term of probation may be declared forfeited and terminated by the court, and the original sentence executed as though it had never been suspended, and the terms of any jail sentence imposed in any such case shall commence from the date of the incarceration of any such person after the forfeiture of such bond or term of probation. There shall be deducted from any such period of incarceration any part of such sentence which may have already been served.

Section 36. CITATION AND JUDGMENT AGAINST SURETY ON BOND. It shall not be necessary to bring a separate suit to recover the penalty of any such bond forfeited, but the court may cause a citation to issue to the surety or sureties thereon, requiring that he or she appear at a time named therein by the court, which time shall not be less than ten nor more than twenty days from the issuance thereof, and show cause, if any there be, why judgment should not be entered for the penalty of such bond and execution issue for the amount thereof against the property of the surety or sureties thereon, as in civil cases, and, upon failure to appear or failure to show any sufficient cause, the court shall enter judgment in behalf of the State of Montana, against the surety or sureties. Any moneys collected or paid upon any such execution or in any case upon said bond, shall be turned over to the county treasurer of the county in which such bond is given, to be applied to the care and maintenance of the child or children for whose dependency such conviction was had in such manner and upon such terms as the district court may direct.

Provided, that if it shall not be necessary in the opinion of the court to use such fund or any part thereof for the support and maintenance of such child, the same shall be paid into the county treasury and become a part of the funds of such county.

Section 37. COUNTY COMMISSIONERS AUTHORIZED TO CARRY OUT ACT — DETENTION HOME — SUPERINTENDENT AND MATRON. The county commissioners of all counties to which this act applies are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this act; and in counties with a population of over .....thousand inhabitants, the county commissioners are authorized and empowered, when in their judgment it appears that there is an imperative need thereof, to provide by purchase, lease or otherwise a place to be known as a detention home, within convenient distance of the courthouse, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, or neglected children may be detained, until final disposition, which place shall be maintained by the county as in other like cases. And in counties having a population in excess of thirty thousand the judge having jurisdiction may appoint a superintendent or matron subject to ratification of the County Commissioners of such county, who shall have charge

of such home and of the delinquent dependent and neglected minors detained therein.

Such superintendent or matron shall be suitable and discreet persons, qualified as teachers of children. Such home shall be furnished in a comfortable manner, as nearly as may be as a family home. The compensation of such superintendent or matron shall be fixed by the county commissioners, such compensation and the maintaining of such home shall be paid out of the county treasury, upon a warrant of the county auditor, which shall be issued upon the itemized vouchers sworn to by the superintendent or matron, certified by the judge.

When such detention home is provided for by the county commissioners, the said commissioners shall enter an order on their journal, transferring to the proper fund, from any other fund or funds of the county, in their discretion, such sums as may be necessary to purchase or lease said home and properly furnish and conduct the same and pay the compensation of the superintendent or matron. Said commissioners shall likewise, upon the appointment of probation officers, as provided in this act, transfer to the proper fund, from any other fund or funds of the county, in their discretion, such as may be necessary to pay such probation officers as provided for herein, such transfer to be made on the authority of this act alone.

At the next levying period, provisions shall be made for the expenses of the court, as herein provided.

Section 38. CO-OPERATION. It is hereby made the duty of every county and municipal official to render all assistance and co-operation within his or its jurisdictional power which may further the objects of this act. All institutions or other agencies to which any child coming within the provisions of this act may be sent are hereby required to give to the court or to any officer appointed by it such information concerning such child as said court of officer may require. The court is authorized to seek co-operation of all societies or organizations, public or private, having for their object the protection or aid of children.

Section 39. CONSTRUCTION AND PURPOSE OF ACT. This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: That the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given it by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And as far as practicable, in proper cases, that the parent or parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child, and all fees and costs in all cases coming within the provisions of this act, together with such sums as shall be necessary for the incidental expenses of such court and its officers, and together with the costs of transportation of children to places to which they may be committed, shall be paid out of the county treasury of the county, upon itemized vouchers, certified to by the judge of the court.

Section 40. OTHER STATE INSTITUTIONS NOT AFFECTED. Nothing in this act shall be construed to repeal any portion of the acts relating to the State Industrial School, the State Vocational School for Girls, or the act or acts relating to the bureau of child and animal protection.

Section 41. PRIOR ACTS EXCEPTED FROM REPEAL. Nothing in this act shall be construed to repeal any portion of sections 11017, 11018, 11019, 11020, 11021, 11022, and 3102 of the Revised Codes of Montana 1921, or any amendments thereof, nor shall anything in this act be construed to repeal any existing law providing for the support, maintenance, guidance, education, or protection by parents of their minor children, and nothing in said laws shall prevent proceedings under this act in any proper case.

Section 42. CONSTITUTIONALITY. If any section, subdivision or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act.

Section 43. LAWS REPEALED. Chapter 51, Part II of the Penal Code of the Revised Codes of Montana, of 1921, including Section 12280, as amended by Section 1, Chapter 52 of the Laws of 1923, relating to proceedings against delinquent children and juvenile delinquent persons, is hereby repealed.

All other acts or parts of acts in conflict herewith are hereby repealed.

Section 44. TIME OF TAKING EFFECT. This act shall be in full force and effect from and after its passage and its approval by the Governor.

NOTES ON BILL NO. 45

This bill is to a large extent a new act with relation to juvenile delinquency. It is taken in part from the Standard Juvenile Law which has been recommended by the National Probation Association, and the remainder of the bill is in part a revision and amendment of our present juvenile delinquency law. We believe that no law in this state has been more difficult of operation than the present juvenile law, particularly in the districts and counties of smaller population, due to several cumbersome features.

First, the appointment of probation officers under the present act is enjoined upon district judges. These officers act for an entire district. Competitive examinations are required to be made before a judge is authorized to make an appointment. The revision permits judges to appoint district officers in their discretion in districts having a population in excess of a certain number and leaves it optional with judges to appoint temporary or part time probation officers, and also to designate peace officers to act as such without compensation except reimbursement for their costs and expenses.

Lawyers familiar with the operation of the present law know that

the procedure is indefinite and vague, little understood by either judges or attorneys. The proposed law attempts to simplify the procedure.

The present law requires judges to give jury trials in cases of this nature, and this on the whole we believe to be injurious to both children and parents who come within the provisions of the law. We believe that there is no judge in the state who desires to commit a juvenile to a state institution if there is any other alternative. We believe that the interests of the child and parent are better served with an informal hearing before the judge, than with the publicity which results from a jury trial. We have looked into the constitutionality of the question and we find that without exception the courts throughout the United States have held that acts of the legislature providing for trial before a court are consitutional; cases of this kind are not regarded as criminal in their nature and have been treated by the courts as in line with the theory that a delinquent child is a ward of the state.

The present statute contains several sections having to do with the establishment of detention homes, administered under the care of the court and partially under that of the County Commissioners. These sections of the law have been a part of our statutes since at least 1911. We are informed that no county in the state has complied with this law. We have retained these sections in the proposed draft, though in our opinion they are a dead letter, but we have amended the provisions of Section 12297 of the 1921 Code, the same being Section 37 of the proposed act, by making it optional in the larger counties to establish these homes. We really feel that these particular sections, so long as our present population does not increase materially, are not of much practical value.

Tentative drafts of this law have been submitted to various judges from time to time and the law in its present form has been drafted to meet criticisms and suggestions of the judges to whom it has been submitted. We believe that the enactment of the proposed law will be beneficial in many respects, less expensive to operate throughout the state, and that it will greatly simplify procedure.

CHAPTER III

MONTANA PRISON CONDITIONS

The Prison Plant

Studies of the Montana Prison situation by the Commission not only revealed serious defects in the physical plant but some alarming conditions were found in a study of the prison population.

Surveys made at the State Prison at Deer Lodge in the summer of 1930 showed serious overcrowding at that institution. On August 29th the prison population was 702, with 555 men inside and 147 prisoners outside the walls. The prison can safely accommodate 500 convicts, 350 inside and 150 outside of the walls. It is necessary to house two men to a cell inside the prison to such an extent as to help defeat the primary purpose of the institution. New men coming into the prison for the first time in a large percentage of cases, must be housed with old offenders. That condition coupled with the fact that about 450 of the 700 prisoners are permanently idle, spending their whole time in their cells, makes the prison a crime school where the vicious offender teaches the tyro the secrets of the criminal's trade.

The prison plant contains several buildings which are neither fire proof nor prisoner proof. Their replacement or rebuilding is a serious necessity. There is imminent danger of a serious calamity from fire or a prison riot. The prison grounds, including all buildings, comprise an area of about six acres. The prison wall itself encloses a little more than three acres. The buildings are close together and of such construction as to make them dangerous in case of either fire or riot.

The administration building was built in 1871 and was the old Federal Prison. It is of native sandstone but has a wood roof, exposed rafters and wood floors. In it are the license plate factory, a tailor shop, a carpenter shop, a shoe repair shop, the deputy warden's office, finger print room, inside bookkeeper's office and other administrative rooms.

Cell House No. 2 presents the most serious situation. The building is an old brick structure put up in 1893. The roof is wood covered with sheet iron. The runways past the cells in the three upper tiers are of wood. The brick walls have so deteriorated in the cell block that they can be easily picked through with any sharp instrument. Each cell unlocks individually with a key. Locks are badly worn, and the keys do not always catch. There were 174 men in 152 cells on August 29th.

A fire in the old federal building would be likely to set the old cell house building nearby on fire also. In case of fire, guards would have to go to each of the 152 cells one at a time over wooden runways to release the men. It is terrible to contemplate what would happen if fire should ever start in that part of the prison. Certainly many prisoners would smother in their cells before the turnkeys could release them.

There are no sewer or water connections in the cells. Light and ventilation are poor.

Cell House No. 1 built in 1912 is in good shape and is fire and escape proof. The only defect is over-crowding, with 381 men in 200 cells on August 29th, practically all of them idle all of the time.

The Dining Room building was built in 1895 of brick and wood. It is in poor condition. Wood floors and roofs in much of it make it a fire hazard. The dining room is upstairs and accommodates only about 300 men. It is necessary to feed another group in the old cell house.

In the building are housed the kitchen, laundry, bakery, band room, barber shop, library, store rooms, guards' tailor shop, fire hall, tin shop, and a boiler room.

There is a concrete hospital building built in 1912 with a capacity of 20 beds. It has its own operating room and a kitchen. It too has floors and ceilings of wood and is not fire proof.

There is a theatre building built in 1918 and donated to the prison. It is constructed of brick and concrete but has a wooden roof and is not strictly fire proof. It will seat 878 people. Church services are held every Sunday. It is also used for a motion picture show each Sunday afternoon and for an occasional boxing match. The basement is used for storage.

One of the worst features of the prison is the Woman's Ward which is in a small enclosure 100 by 100 feet. In the enclosure is a seven room brick cottage. It has a wooden roof and is dark and dismal. It is a fire hazard. The yard is very small and its use as a woman's prison should be discontinued.

There were 138 men and the 9 woman prisoners outside of the main enclosure on August 29th. About fifty men were employed on the farms, of which the prison operated eight. Seventy-five trusties were employed at various jobs outside, eight more were in the office and nine in the power house. The prison has a bunkhouse outside the wall for the outside prisoners and 84 men are taken care of there. It is a fire hazard and should be enlarged and remodeled.

Of the eight ranches operated, the prison owns one. One belongs to the State and is operated by the prison. The others are leased. A number of men are employed permanently in the farm plants. Seventy-five to ninety are worked on the farms in the summer and sixty to seventy in the winter work in the wood camps. The prison used $17,000 worth of supplies from the prison farms last year and sold over $6,000 worth of products besides.

The prison yard comprises about three acres inside the walls. Space is very limited and the yard should be enlarged. It is possible to add a space 100 by 300 feet on the north side of the yard by completing a fill of a sloping bank between the prison and the river. That would give additional space for prison industries which are so badly needed.

The prison has a sawmill and planing mill outside the walls, a garage, blacksmith shop, barn, carpenter shop, heating plant, prison store and store rooms, besides the warden's office and the warden's home.

The prison industries inside the walls include the auto license plate factory which employs from 25 to 40 prisoners during six months of the year.

The tailor shop, shoe shop and carpenter shop in the federal building employ about thirty men. The tailor shop makes the prison clothing and does work for other state institutions. Their output last year included 585 dozen shirts, 337 dozen overalls, 73 dozen jumpers, 68 dozen night shirts, 175 dozen overalls for other state institutions, 250 dozen shirts, 68 dozen night shirts, 175 dozen undershirts and 175 dozen drawers. There is a tin shop which makes pails, cups and plates for the prison use.

The distribution office for auto plates uses about 60 men for nine months, some inside and some outside the walls.

But despite the fact that about three men are usually used for what would be one man's job, the amount of work available is extremely limited and one of the state's most serious prison problems is that of provision for employing the convicts at some form of work.

The prison management in Montana is under the direction of Warden Austin Middleton. He has proven himself, in the opinion of the Commission, a very able and efficient officer. The discipline of the prison is excellent, the business administration is very efficient and he has the prison plant in as good repair as is possible with the means given him.

The Commission acknowledges here the work done by Mr. Herbert Peet, its former secretary, in gathering data on conditions at the State Prison.

Prisoners in Montana State Prison

In connection with the study of the crime situation in Montana, all of the members of the Crime Commission visited the State Penitentiary at Deer Lodge once, and some of the members made two additional trips. The purpose was to observe conditions and facilities, and to get data from the records of prisoners in an effort to interpret the tendencies in crime, and the effectiveness of methods for dealing with criminals.

Elsewhere in this report will be found a discussion of the conditions and needs at the Penitentiary. There is presented here a discussion of the prison data which was prepared under the direction of the Warden of the Penitentiary. Genuine appreciation is due the Warden for his cordial and helpful co-operation and guidance.

The statistics from the prison records cover the periods between 1909 and 1929, and deal with first offenders and repeaters, the crimes most commonly committed, ages of prisoners, and methods of discharge.

First Offenders and Repeaters

A study of the records of the Montana State Prison for the years 1909 to 1929, inclusive, shows that the percentage of repeaters increased rather substantially during that time. In 1909, 11.5 per cent of those received at the State Prison had been convicted of some previous offense, while 88.5 per cent were in prison for the first time. From this year on there was an increasing percentage of repeaters. By 1920, 24.9 per

cent of the prisoners received had been convicted of a previous crime; by 1925, 29.3 per cent; and by 1928, 40.9 per cent. The average of those received in the penitentiary for the 20-year period and serving at least their second sentence was 21.4 per cent.

Crimes Most Commonly Committed

During the 20-year period 1909 to 1929 prisoners were sent to the Montana penitentiary for 84 different crimes. Twenty of the crimes account for 91.6 per cent of those sentenced. The other 64 crimes account for only 8.38 per cent of the total.

Crimes for which prisoners are most frequently sent to the penitentiary are those which have for their motive the illegal getting of some material thing from someone else. More than two-thirds, 67.96 per cent, of the prisoners at the Montana penitentiary are there for grand larceny, forgery, robbery and first and second degree burglary. Those convicted for grand larceny make up the largest group, accounting for 26.6 per cent of the total. The inability or unwillingness of people to earn what they feel they must have is at the foundation of the majority of criminal actions.

The crime of second degree murder accounted for only 2.03 per cent of the convicts, and only 1.94 per cent were there on convictions for manslaughter. Some of the other crimes in the group of twenty are assault, felony, sedition, passing worthless checks, rape and receiving stolen property.

Ages of Prisoners

The belief commonly prevails that prisoners are now much younger than they were just prior to the war, but the statistics from Montana State Prison do not support this generally accepted notion. In 1909, 15.95 per cent of the prisoners in Montana State Prison were 21 years of age or under, while in 1929, 15.35 per cent were in this age class. The average for the entire 20-year period shows 15.68 percent in the 21-or-under group, so that the years 1909 and 1929 were very close to the average.

Some variations occur from year to year in the percentage of prisoners 21 or under, but there is clearly nothing to indicate that prisoners are younger than they used to be. In 1912, the average percentage of those 21 or under was 17.17 per cent, and in 1925, it was 17.39 per cent. The percentage jumped up to 20.45 per cent in 1928, but variation of this sort will occur in any group, and the figures do not indicate any permanent tendency.

Discharges

During the 20-year period, 1909 to 1929, 7,332 prisonres left the custody of the Montana State Prison. Of this group 4,043, or 55.1 per cent were paroled; 2,354, or 32.1 per cent were discharged at the completion of their sentences; 316 or 4.3 per cent escaped; 292 or 3.9 per cent were released through the order of the court; 96 or 1.3 per cent were pardoned; and 69 or .9 per cent died. These groups include 97.8

per cent of all the prisoners leaving the penitentiary. The remaining few were discharged in other ways.

An examination of the figures show rather interesting comparisons in the methods of terminating sentences in the penitentiary in 1909 and at the present time. In 1909 only 40 or 13.3 per cent of those leaving the prison were paroled, and 238 or 79 per cent completed their sentences. In 1920, 250 or 71.2 per cent were paroled, and 30 or 8.5 per cent had served out their sentences. In 1928, 241 or 84.5 per cent, of those leaving were paroled, while only 10, or 3.4 per cent completed their sentences.

The variation in the number paroled, and the sharp increase in the termination of sentences through parole, can be attributed in large measure to changes in legislation affecting paroles. In 1909 the "flat" or determinate sentence was in effect, and the majority of prisoners were then discharged, either with statutory good-time (Prov. Sec. 12455) or with both the statutory good-time and the additional good-time earned while working outside the walls (the latter allowance being provided in Sec. 12456, Ch. 1, Revised Codes of Montana, 1921, also identified as Board of Prison Commissioners Rule 119), or upon completion of their sentences. Paroles at that time were provided for in Sec. 12264, Ch. 49, R.C.M. 1921, which law was enacted in 1907 (Sec. 1, Ch. 95, Laws of 1907).

In 1915, the Indeterminate Sentence Law was enacted (Sec. 1, Ch. 14, Laws of 1915), and it will be noticed that the number paroled increases from that time forward. Sec. 2, Ch. 14, L. 1915, provides for the parole of prisoners sentenced under the indeterminate sentence law upon the completion of the "minimum" prescribed. Both of the cited sections were amended in 1917 (Sections 1 and 2 of Chapter 16, L. 1917), providing for the parole of prisoners in "one-half the minimum." There was a decided increase in paroles when this change went into effect.

There now is a swing in the other direction. With the revocation of the Indeterminate Sentence Law, the total paroles for the fiscal year ending June 30, 1920, was 238, and the total discharges, 41. The next few years, no doubt, will show a far greater number discharged than paroled, unless, of course, there should be another change in the law.

The figures on paroles of special interest in connection with the table showing the increase in the number of repeaters. As the percentage of those leaving the penitentiary through parole increases, there is some increase in the percentage of those who are sentenced for second and later offenses.

In considering the parole problem it should be borne in mind that the facilities for detaining and caring for prisoners in most states have increased much more slowly than have the number of prisoners. This is true at the Montana State Prison, and it would seem that more adequate facilities will have to be provided if prisoners are to be detained for the full period of their sentences. This is presented not as an argument for or against the parole system, but merely to call attention to the fact that with inadequate facilities, prisoners must be released from the penitentiary at about the same rate as others are committed.

First Offenders and Repeaters at Montana State Prison

YEAR	Number of Prisoners Received	Number of First Offenders	Per Cent First Offenders	Per Cent Repeaters
1909	376	333	88.5	11.5
1910	294	257	87.4	12.6
1911	395	344	87.1	12.9
1912	361	298	82.5	17.5
1913	396	340	85.9	14.1
1914	406	336	82.7	17.3
1915	425	348	81.9	18.1
1916	436	362	83.1	16.9
1917	434	344	79.2	20.8
1918	312	261	83.6	16.4
1919	292	236	80.8	19.2
1920	205	154	75.1	24.9
1921	257	203	79.0	21.0
Jan. 1 to June 30				
1922	109	90	82.5	17.5
1923	211	151	71.5	28.5
1924	232	166	71.5	28.5
1925	276	195	70.7	29.3
1926	295	219	74.3	25.7
1927	261	176	67.4	32.6
1928	264	156	59.1	40.9
1929	361	238	65.9	34.1
July 1 to Dec. 31				
1929	241	170	70.5	29.5
Total	6,839	5,377	78.6	21.4

Crimes Most Commonly Committed

The records show that persons were convicted and sentenced to the State Prison for 84 different crimes from 1909 to 1929. The table below shows the list of the crimes most commonly committed.

CRIME	Number of Convicts	Percentage of Total
Grand Larceny	1,820	26.61
Forgery	813	11.88
Burglary (not defined)	726	10.61
Robbery	469	6.85
Burglary (1st Degree)	438	6.40
Burglary (2nd degree)	384	5.61
Assault (2nd degree)	336	4.91
Rape	288	4.21
Murder (2nd degree)	139	2.03
Narcotic Law Violation (1)	138	2.01
Manslaughter	133	1.94
Assault (1st degree)	116	1.69
Felony (undefined)	107	1.56
Worthless Checques	96	1.40
Concealed Weapons	73	1.06
Liquor Law (2)	50	.73
Money False Pretences	49	.71
Sedition (3)	42	.61
Rape (attempt)	42	.61
Receiving Stolen Property	34	.49

This list of 20 crimes accounts for 91.62% of the persons convicted and sentenced to the State Prison during the 20.5 years from 1909 to 1929.

(1) First Case in 1922. (2) 1923 to 1927 only. (3) 32 of these in 1918.

Discharges

YEAR	Paroled		Pardoned		Discharged		Escaped		Order of Court		Died	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
1909	40	13.2	4	1.3	238	79.0	2	.7	14	4.6	2	.7
1910	23	6.2	0	.0	332	89.0	6	1.6	8	2.1	3	.8
1911	39	10.9	3	.8	271	75.9	22	6.1	16	4.5	4	1.1
1912	69	16.9	6	1.5	299	73.4	13	3.2	14	3.4	0	.0
1913	87	21.4	6	1.5	275	67.7	18	4.4	15	3.7	5	1.2
1914	138	32.2	4	.9	240	55.9	25	5.9	16	3.8	2	.5
1915	188	41.7	5	1.1	222	49.2	18	4.3	13	2.9	1	.2
1916	199	47.4	4	1.0	151	36.0	22	5.2	19	4.6	3	.7
1917	282	56.0	2	.4	151	30.0	28	3.0	17	5.4	2	.4
1918	324	70.0	7	1.7	56	12.1	20	4.4	17	3.9	28	6.1
1919	275	73.1	2	.5	36	9.6	23	6.1	19	5.1	3	.8
1920	250	71.2	3	.8	30	8.5	37	10.5	14	3.9	3	.8
1921	270	80.4	11	3.3	15	4.5	20	6.0	12	3.8	3	.9
One-Half												
1922	110	87.1	2	1.3	2	1.3	5	4.0	3	2.4	3	.9
1923	220	89.0	2	.8	7	2.9	10	4.1	5	2.0	0	.0
1924	200	87.1	0	.0	3	1.1	10	3.9	41	15.9	1	.4
1925	236	90.1	3	1.1	1	.4	11	4.2	7	2.8	0	.0
1926	246	86.9	5	1.8	3	1.1	3	1.1	14	4.9	2	.7
1927	220	88.0	5	2.0	6	2.4	7	2.8	2	.8	1	.4
1928	241	84.5	5	1.7	10	3.4	11	3.8	14	4.8	2	.7
1929	257	89.9	10	3.5	5	1.8	1	.3	5	1.8	1	.3
One-Half												
1929	129	82.5	7	4.6	1	.6	4	2.7	7	4.6	2	1.3
Total	4043	55.1	96	1.3	2354	32.1	316	4.3	292	3.9	69	.9

97.8 per cent of all prisoners discharged during this period are included in this table.

Ages of Prisoners

YEAR	Total Prisoners	Number 21 or Under	Percentage 21 or Under	Number 22 to 30	Percentage 22 to 30
1909	376	60	15.95	175	46.54
1910	294	43	14.62	135	45.91
1911	395	62	15.69	165	41.77
1912	361	62	17.17	154	42.65
1913	396	55	13.88	185	46.71
1914	406	50	12.31	191	47.04
1915	425	50	11.76	185	43.52
1916	436	53	12.15	186	42.66
1917	434	42	9.67	181	41.70
1918	312	28	8.97	99	31.73
1919	292	53	18.15	89	30.49
1920	205	48	23.41	79	38.53
1921	257	59	22.95	96	37.35
Jan. 1 to June 30, 1922	109	19	17.43	55	50.46
1923	211	39	18.48	81	38.38
1924	232	49	21.12	83	35.77
1925	276	48	17.39	102	36.95
1926	295	43	14.57	116	39.32
1927	261	50	19.15	100	38.31
1928	264	54	20.45	119	45.07
1929	361	69	19.11	139	38.50
July 1 to Dec. 31, 1929	241	37	15.35	112	46.47
Total	6,839	1,073	15.68	2,827	41.33

These figures do not support the commonly accepted conclusion that the crimes are being committed by persons much younger than was the case prior to the war.

Building Program Recommended at Deer Lodge

The expenditure of a considerable sum in rebuilding the prison plant at Deer Lodge is a most urgent necessity. The State may awake at any time to hear of a serious calamity such as has resulted from like conditions in other prisons in the country during the present year.

Warden Middleton is prepared to do most of the work necessary with convict labor at a great saving to the State. That would have the added advantage of, for the time being, giving some relief from the unployment problem in the prison.

The ideas of the Commission as to the building program are largely those of the Warden, whose ideas impressed us as highly practical. He would gut the old federal building, leaving only the walls. He would put in a half basement the full length, put on a fireproof roof and floors. Tunnels then could be run to the two cell houses on the north and south. The dining room would be put in the basement. On the first floor the kitchen and laundry and deputy warden's rooms would be placed. The second floor would be used for sleeping rooms for guards and for recreation rooms. Supplies and material would be the expense necessary. The labor could be done by the convicts.

In the old cell house the Warden would tear out the old cell block in the center and put the new cells around the four walls with a set of galleries for the guards down the center of the corridor. He would put a fire-proof roof on the building, reinforce the outside walls and steel-bar the windows, put running water and sewer connections in the cells

and increase the number of cells by 18. New modern locks operated by levers from outside the cell blocks would be installed. The State would have to buy the materials but virtually all of the labor could be done by the convicts. The cell house then would be both fire-proof and escape-proof.

The old dining room building should be rebuilt with convict labor and made fire-proof and more efficient as a service building. The Warden would house the prison industries in this building when rebuilt.

The Women's Ward could be repaired and made fire-proof and be used to confine the degenerate prisoners of the worst type who are now necessarily confined with the more normal men.

One of the most urgent recommendations which we make is that such a building program be started as soon as possible.

A Median Institution Needed

The study of the prison population of Deer Lodge brings one very striking fact to the attention of the Commission. Montana's State Prison is badly crowded; over seven hundred men are committed to a prison with accommodations for not over five hundred at the best. As a result, it is necessary, not only to keep as many men outside of the prison as the Warden dares to at any time under such circumstances, but it is necessary to house two men to a cell to an extent that is very undesirable.

The prison officials are frank to admit that the Montana prison, to a large extent, is educating men to be criminals rather than reforming or deterring them from further crime. Whatever we may think the object of a prison sentence or whatever our idea may be of the purpose to be attained in imprisoning men, it is very evident that for the protection of society, we aim by such sentence to deter offenders from repeating their infractions of the law. If the conditions at the State Prison are not attaining that, it is evident that they should be corrected. We believe that it is impossible to accomplish that purpose with young and first offenders, to the extent we might reasonably expect, when such offenders are thrown in close contact with hardened and habitual criminals. We believe that there should be a separate institution for a certain type of prisoners where there is a reasonable hope of reforming them or at least of deterring them from future ventures in crime.

We would recommend a median institution be established between the Boys' Industrial school and the State Penitentiary. More room is needed anyway for prisoners at Deer Lodge. Even with the rebuilding of the present plant the deplorable condition would still exist of overcrowding and the throwing of idle men together in cells with nothing to do but encourage each other in continuing their offenses against society. Instead of enlarging the capacity of that plant, however, we recommend that the Legislature seriously consider the plan of establishing a reformatory institution to which offenders might be sent who have never before been convicted of crime and where they might be entirely out of contact with the habitual criminal class.

Such an institution, in our opinion, following the modern practice,

should be located on a big farm where the men might be employed at farm labor. They could provide, partly at least, for their own maintenance from the products of such a farm. Such an institution should be less on the penitentiary order than the Deer Lodge institution, and it might well be made to include some of the older young men who are now necessarily sent to the Industrial School for Boys where they make most difficult the problem of that institution.

We are certain from our data on the prison situation that such a type of institution would improve the penitentiary conditions in remedying many of the most serious difficulties of that institution.

As long as more room is needed for the prisoners sent to Deer Lodge anyway, we believe the relief should be given by establishing a new type of institution for a class of offenders who cannot be properly handled and disciplined at the penitentiary. The growing number of repeaters in the State Prison shows the failure of the present institution to accomplish its purpose of breaking young offenders of their lawless ways.

Removal of Women's Ward

The Women's Ward at the Montana State Prison is a disgrace to the State of Montana. The enforced intimacy under which the women prisoners live is entirely indefensible. The ward itself is dark, dismal and dangerous. There is no adequate protection against fire and there is given to the women prisoners not even the advantages enjoyed by the men for outdoor exercise and recreation.

Some other provision should be made for the few prisoners of that sex who are sent to the penitentiary. Some cottage system could be employed outside of the prison walls and more in keeping with the modern practice in handling women criminals.

School for Prisoners at the State Prison

One of the great needs of the Montana State Prison is some form of educational work preferably along vocational lines. No facilities are now available for giving a prisoner, who might have the desire for it, any training or education to fit him for a more useful life after he leaves the institution. The great majority of men who come there are untrained in any trade or vocation. A very large percentage of them are almost or entirely illiterate. They spend their time in absolute idleness, acquiring habits of sloth. When they leave the prison, they are so poorly adapted to the task of earning their living in an honest way that they naturally drift back into criminal habits.

The Warden of the penitentiary tells us that in a surprisingly large percentage of cases, men of this untrained type return to the institution in a few weeks or a few months at the most. A number of these men could be aided in going straight if they were given the opportunity to get a little schooling and some training in some manual trade during their period of enforced idleness. Some prisoners of their own volition and under the most discouraging circumstances do take up correspond-

ence courses and try to obtain some information through the use of the prison library. There are no facilities for encouraging that inclination, however. The Warden very properly, it seems to the Commission, is desirous of having some modest provision made for establishing a prison school for the benefit of those who would endeavor to improve their ability to take care of themselves on their discharge.

There are available a few prisoners who could assist in some of the work of such a school. It would partly solve the problem of idleness as well as meeting the humanitarian need of giving the social offender, who is ill-trained and poorly educated, a chance to improve himself if he has the honest desire to do so.

Employment of Prisoners

The Montana Crime Commission is of the opinion, from their study of the situation at Deer Lodge, that a serious mistake is being made in the policy of the State in keeping so large a percentage of the convicts there continually in enforced idleness. Of the seven hundred and over men in the prison at the time of our survey, about four hundred and fifty of them are idle all of the year around. Except for a brief period of exercise they take daily in the prison yard, they spend their whole time loafing in their cells.

Idleness of this type is no help in reforming the convict or in deterring him from a criminal career. He gets out of the habit of work; he goes out into the world at the end of his term less inclined and less able to earn his living at any honest occupation. He is merely encouraged to seek to obtain a living at the expense of society. More than that, the enforced idleness gives men time to brood and to plot. It tends to make them more anti-social in their attitude. They spend their days thinking over their fancied wrongs and planning to beat the law as soon as they have the opportunity. Warden Austin Middleton has used every possible opportunity to keep men at work. Whenever any job is available, it is apportioned out among the men to the widest extent possible. But it is still impossible for him to employ more than a small portion of the men under his charge at any useful occupation.

Employment of prisoners is admittedly a problem difficult of solution. However, the needs of society and the demands of humanity force us to the conclusion that it is wrong, that it is futile, that it is defeating the very aim and purpose of such an institution to deprive men of the opportunity and the corrective benefit of some form of labor or work. The building program which is so badly needed in the prison could, for the time being, be utilized to provide work for a large number of men. But as a permanent policy, an effort should be made to provide some form of prison industry which would keep the men occupied and busy.

We would urge that the Legislature provide for a thorough study of this topic and that the very definite and practical ideas of the Warden on the subject be given thorough consideration in such a study. There is at present in the prison the auto license plate factory of the State in which a number of men are used very successfully. There is a

garment factory which employs a few men and which makes a large percentage of the clothing used by the prisoners at Deer Lodge and by the inmates of several of the State institutions. A further use of the prison labor in manufacturing supplies for other institutions might be possible. State Prison farms employ as high as one hundred twenty-five to one hundred sixty men at times during the year. The prison logging camp and sawmill, which largely supplies the wood and lumber used in the prison, gives employment to a few more. Other forms of industry should be instituted to greatly extend the scope of employment at the institution.

Permanent Tenure for Warden

We would urge on the Legislature that an effort be made to remove the Warden's office from the list of political appointments, and that an experienced and capable officer be assured of permanent tenure, regardless of change in administration.

We believe the job is too important and too complicated to make it advisable to be continually changing officers merely because of political changes in the State administration.

Parole Officers

There has been much dissatisfaction in the State of Montana in the past with the working of the parole system. The repeal in recent years of the Indeterminate Sentence Law is beginning to reduce the percentage of prisoners released on parole. But there still exist under the State Constitution and the state law, provisions for pardons and paroles and for good behavior allowances for prisoners.

The very fact that the prison is so crowded at the Montana penitentiary makes it almost inevitable that as new prisoners come in other men must be released before the full period of the sentence imposed upon them expires. That that system does not improve the crime situation in the State, men connected with the administration of the prison are free to admit. The percentage of repeaters coming to the prison is, to a very marked degree, greater than it was when the prison records were first begun.

Undoubtedly some of that condition is due to the laxness of our parole methods in this State. The very essential feature of the parole system is some method of keeping track of the man released and making him feel that he is under the surveillance of the officers of the law.

The parole officer system we had in the past was poorly designed to accomplish its purpose. We believe that some form of parole supervision should be instituted to keep track of all men released before the full expiration of their sentence or those under suspended sentence with the aim of encouraging them in going straight and promptly checking them if they tend to drift back into criminal ways. Such parole officers, in our opinion, should be under the direction of the Warden and closely identified with his staff.

It has been suggested by Warden Middleton that in cases where sentences are suspended by the District Court that the prisoner should be first taken to the State Prison, or other penal institutions that may be created, there examined, fingerprinted and his record filed. His suspended sentence should be granted only after he has been so received at the prison office. The Warden believes that this near approach to the prison in this manner will have a beneficial effect upon the prisoner and make him realize the importance of good behavior under the terms on which his sentence was suspended.

Reform in Pardon Procedure

Under the present system in Montana, petitions for pardon and parole are sent first to the Governor of the State for his recommendation. Upon his recommendation for granting of the parole or pardon, the application is sent to the State Pardon Board for final action. We believe that the procedure is just the reverse of what it should be. The Governor of the State should have the final responsibility and authority. The purpose of the pardon board should be simply that of investigation and recommendation.

The only good purpose served by such a Board is to give an opportunity to study the cases presented, to weigh the evidence and to make recommendations upon which the Governor can base his decision. It should relieve him of the necessity of giving time to detailed study of the cases continually coming up for action. But the divided responsibility which is inevitable under our present system makes the whole procedure too haphazard and lax.

We would urge that action be taken to reverse the plan now in operation, and to make the Pardon Board the instrument of investigation, which it should be, with the final power in the chief executive, where it should be placed.

CHAPTER IV

THE JUVENILE OFFENDERS

A study of the institutions for juvenile delinquents corresponding to the one made of the prison, was not made by the Commission. That there should be some such survey made in connection with the crime problem study, we are certain. It is one of the topics for the consideration of a future Commission.

The Commission has, however, visited the State Industrial School for Boys at Miles City. That institution is badly crowded and is caring for more inmates than its buildings were designed to accommodate.

In that connection, however, we believe that much relief could be secured by providing for a full-time probation officer for the school. That would make possible a more liberal policy in releasing boys on probation after a short stay there to get them straightened out.

The primary purpose of the Industrial School is the salvation of the human material sent it. The aim and purpose of that institution is to keep boys from following a life of idleness and crime. Imprisonment is not the primary purpose of the school. The tendency has been, because of the lack of men to handle the work, to keep some boys in the institution longer than should be necessary. The overcrowded condition could be partly remedied at least, if the director of that institution had more opportunity to give boys a chance to go out when they had shown themselves apparently deserving of such an opportunity. The principal obstacle in the way of doing that at present is the difficulty of keeping track of them and of checking up on them after they leave. The school should have a full-time probation officer who could follow the boys when they are sent home or to places where they might work, to observe their progress, to keep track of their conduct and to encourage them in proper habits and the proper attitude toward society. The usefulness of the school, in our opinion, would be greatly increased and the results with the inmates greatly improved if such a probation officer were provided.

A visitor to the State Industrial School for Boys is struck with the range of ages of the inmates. Boys down to nine and ten years of age are sent there, not so much for their misdeeds, as because the unfortunate home conditions under which they are living were endangering their future relations to society.

At the other extreme, young men are found who are practically mature in every respect, and who have become very difficult individuals to handle. This anti-social attitude has, in many cases, been developed to a very considerable degree before their arrival. Placing boys of such extreme ages and stages of maturity and varied experience in one institution strikes the Commission as an unfortunate condition.

The suggestion that we have made as to a median institution between the Prison and the Industrial School might well be accompanied

by the lowering of the maximum age at which boys would be committed to the Miles City institution. At least some provision should be made for further segregating certain of the older inmates from contacts with the younger boys of that particular school.

The Commission is desirous of commending the work of Superintendent Dorr of the Miles City Industrial School for Boys, and the excellent condition in which the institution is kept. The main need of the school's plant seems to be more cottages such as the one that was built most recently. The cottage system of housing the boys and young men there impressed the Commission as the most satisfactory plan.

CHAPTER V

THE DETECTION OF CRIME

There are many phases of the crime problem in the State which call for much more study than the Commission has been able to devote to them in the eighteen months of its existence. Among such main phases of the subject may be named that of crime detection. The criminal must first be caught and the evidence secured before the courts can decide what shall be done with him. Conviction oftentimes fails because of lack of attention to the gathering of evidence or carelessness in preparing it for presentation. There has been little improvement in our crime detection methods since the State was organized.

A State Police or Constabulary

Montana depends almost wholly upon the old county sheriff system to investigate criminal cases and to detect and apprehend the criminals. The sheriff system is admittedly inefficient. It is a combination civil and criminal office, dealing with a wide variety of matters and the man in charge is a political officer, subject to the vagaries and whims of political campaigns every two years. Although the office of sheriff is of great antiquity in Anglo-Saxon countries, in England, where that office first appeared and in Canada, where the influence of British precedent is strong, the sheriff has become a purely civil officer and has nothing to do with the task of ferreting out crime or catching criminals.

In the early days of this country when the colonies were young, when communities were isolated and travel and communication was slow, the old English sheriff system was adapted by our colonists to the task of enforcing the law. The officers knew practically everybody who might be guilty of such offenses as might occur and the system worked fairly well. Under modern conditions, it is totally inadequate for the task with which we have burdened it. Every device and invention which science develops has been taken advantage of by the lawless and the criminal as an aid in the perpetration of offenses against society. Ease of communication, rapidity of travel and the complexities of modern life make it essential in any public service to have trained, efficient officials to perform difficult tasks. That is just as true in the detection of crime as in any other branch of public service, if not more so.

Montana has a particularly serious problem in the matter of crime detection, due to her large area, the long distances between towns, the scarcity of large towns with trained police forces and the existence of a large number of small communities scattered over rural areas with absolutely no police provision for their protection. The sheriff is not a police officer who can give his time to patroling roads and streets in his county, watching to prevent criminal offenses or to follow them up promptly if they are committed. There are at time veritable reigns of terror along our main automobile highways due to the influx of desperate and experienced criminals, who commit many crimes of violence

and are beyond detention and detection before the forces of law can get into operation. Our inexperienced and untrained county sheriffs and deputies are ill-prepared to combat such situations.

The answer, which has been found to such a situation in several of the states of the Union and in practically every English speaking colony of the British Empire, has been a constabulary or police system designed particularly for the areas outside of the well-policed cities. The state police force of the State of Pennsylvania is perhaps the most modern and best organized of all such systems. We would respectfully recommend that consideration be given to the possibility of adapting such a system to the very evident needs of Montana's rural areas.

The Pennsylvania system is organized on a military basis. It consists of a highly trained force of men with high standards of intelligence and high standards for the conduct of the men in its ranks. The system is separated entirely from politics and is on a merit basis only. All men admitted to the force are required to be physically active, with certain educational qualifications and well recommended as to their moral character. After passing rigid mental and physical tests, they are given a very thorough course of training in all phases of the work which they will have to do, in gathering evidence, detecting criminals, preventing infractions of the law, and maintaining the peace of the community in which they are stationed. They are then put on probation for a period of six months in active service, and if they prove themselves fitted to the work, they are assured of a permanent place with adequate pay as long as they maintain the standards of the system for efficiency, courtesy and good conduct. The Mounted Police of Canada, the Rangers of Texas, are also well known examples of constabulary systems in use under conditions very similar to those prevailing in this State. They have proven their efficiency and ability in the enforcement of the law, by actual trial under conditions much similar to what such a force would encounter in Montana. We wish to emphasize the point that this system is not at all comparable with the suggestion sometimes advanced for a State Sheriff to supervise the law enforcement efforts of the County Sheriffs. We believe that if any change is made, it should not be in the direction of adding another political officer to a system already too closely identified with politics, but should take the direction of installing a trained, non-political, well-organized and disciplined police force with a permanent tenure of office, devoted exclusively to the one task of preventing and detecting crime. We earnestly recommend that the Legislature give serious consideration to relieving the sheriff's office of criminal work and turning that task over to a specialized police force under centralized State control.

Four Year Term for Sheriffs

If the Sheriff's office is to continue to handle any of the work of law enforcement in this State, we would recommend to the Legislature that steps be taken to increase the length of term of that officer to four years.

Montana has several notable sheriffs who have become very efficient officers, but it is always true that the man entering the sheriff's office for the first time has to undergo an apprenticeship of training which it is difficult to obtain in one term in that office. He is always subject to political upheavals which may have no relation to his efficiency as an official. In fact, too often his efficiency may earn him the enmity of powerful groups who combine with some opposing political party to threaten the end of his official career just about the time that he has become useful and valuable to his county.

A lengthened term of office would be desirable to assure the county the benefit of the experience of the sheriff in the criminal branch of his work especially.

County Attorneys

Inadequate pay for County Attorneys has made that office a training school for beginning lawyers in many of our counties. It has made the older County Attorneys inclined to restrict the time and energy they will give to the office.

Poor preparation of the cases is responsible for many failures to convict criminals in our trial courts. The criminal hires the best attorneys available when he can. The State lets inexperienced lawyers learn their profession at its expense.

The main recommendation which the Commission would make to improve the standard of prosecuting attorneys in the State would require constitutional amendment, but we wish to call the attention of the Legislative assembly to the subject nevertheless. We believe that higher qualifications should be required of county attorneys than are required at present, and such higher qualifications would necessarily mean increased pay for that office. The prosecuting attorney should be remunerated sufficiently that he might be required to give his whole time to the duties of the office. It might be advisable to consider the plan of providing for district attorneys in place of the county attorney system.

School for Enforcement Officers

It is the opinion of the Montana Crime Commission that the public interest would be served and the efficiency of law enforcement would be increased in this State if some provision could be made by the State Legislature for the holding of schools of instruction for law enforcement officials such as sheriffs and their deputies, police officers, livestock inspectors and others charged with the detection and prevention of crime. Such schools should give instruction, not only in practical and modern methods of tracing and detecting criminals and solving crime problems, but also in the important matter of what constitutes evidence necessary to convict in the courts.

Such a school could be held at some central point in the State for a few days' time each year, with instruction by some experienced and competent man at an expense which would not be very great. There is

at present no method of informing such officers of new developments in criminal work. The large majority of them are totally without professional training and have little idea of the most effective detective methods. Many of them are even lacking in practical experience.

In some few cities some work has been done in training local city police officers in the technique of their job, but such work has been very limited in its scope, and has never reached the sheriffs and their deputies, who have the bulk of the task of law enforcement in Montana.

Drivers' License Law

While it is not perhaps directly connected with our work as a Crime Commission, we would urge that a drivers' license law be enacted in this State as one of the means of controlling the rapidly increasing traffic upon our State highway system.

Such a law would have some bearing upon the work of law enforcement beyond merely the regulation of traffic. It would be of valuable assistance to peace officers in many different ways. We add to the recommendation of other people of this State our hearty endorsement of the proposal that such a law be enacted in Montana.

Bureau of Identification

The Montana Crime Commission recommends to the Legislature that a State Bureau of Identification be established at some convenient central point in the State. It is the unanimous opinion of all men experienced in the work of controlling crime that records of known criminals should be most carefully and systematically compiled. We submit a bill embodying our ideas of how that work should be handled.

A start has been made at the State Penitentiary in filing fingerprint records and compiling other data in identification of criminals apprehended at different points in the State. Exchanges have been started with several of the neighboring states and with a central bureau at Washington. Some of our counties and cities have also instituted, with a fair degree of efficiency, identification records and have supplied the State Prison Bureau with copies of their files. The work, however, is not compulsory. It is very laxly carried out in most counties where it is undertaken at all, and in some counties practically no effort is made to keep such records. We believe that such a central bureau should be established by law under the direction of trained experts and that its operation should be made compulsory. All counties should be required to cooperate in compiling such records and exchanging them with the central bureau in order that they might be available at any time for any county or city or any peace officer all available information as to habitual criminal offenders.

This is one of the most important steps that can be taken, in our opinion, in making more successful the effort of peace officers in crime detection.

CHAPTER VI

JURY SYSTEM

A major topic for the study of some future Crime Commission should be that of the jury system. We have not made sufficient study upon which to base recommendations for changes, which some of us at least feel should be made in this branch of our courts. We would call attention, however, to one phase of the jury situation.

Montana is one of the very few states in the Union which provides that the names of all taxpayers within certain ages whose names appear upon the last assessment rolls of the county shall be placed upon the jury list for the ensuing year. In other words, we have no such thing as a selective jury list. We select our judges, our county attorneys, our sheriffs, and our clerks of court by election. We require certain qualifications of those officials, but when it comes to the choice of the persons who try the facts in the case or upon whom rests the final responsibility of saying "guilty" or "not guilty" in a criminal case, we leave our selection entirely to chance. The illiterate, the lawless, the irresponsible classes of our population are considered under our law as capable of deciding as the intelligent, law-abiding and respectable people of the community, not only criminal cases but the most difficult and complicated civil suits.

Practically all civilized countries and most of the states of the Union have some form of selecting those who are eligible for jury duty. We submit that it is not a radical suggestion, that it is reasonable and logical in making up the list of those qualified for jury duty, to provide some method of elimination. The all-embracing form of list provided by the Montana Statutes is unnecessary. It hinders the administration of justice, it does not promote democracy and it is no safeguard to the rights of the accused.

The aim of the law is not to insure the conviction of everyone accused, but it is to make as certain as possible the doing of justice between the State and the prisoner at the bar. There is as much danger of a too haphazard a jury system doing injustice to the accused in times of public excitement and frenzy, as there is of failing to convict a guilty person because of the indifference or ignorance of the jurors.

Most states of the Union, almost without exception, provide for some form of impartial jury commission which selects a limited number of competent jurors, establishing some standard according to which those jurors are picked. One of the common provisions is that such a jury commission shall select none but persons whom they believe to be of good repute for intelligence and honesty. The Commission realizes that there have been charges at times in some Montana counties that the jury commission has not properly selected jury lists and has intentionally made up the lists on a restricted basis, to enable certain offenders to escape or certain attorneys to benefit by their selection. No plan can

be adopted which is free from abuse, but we feel that the workings of our system and the experience of other states and counties justify the conclusion that some form of selection is advisable. We would urge that the Legislature seriously consider that much of a modification of our jury system at the present time. We submit no concrete plan or measure for consideration because it is a matter of far-reaching policy rather than one of detail to be studied.

CHAPTER VII

MISCELLANEOUS

Character Courses in Schools

One of the fundamental causes of crime is the lack of proper environment of the child. He is frequently left to shift for himself without any parental guidance and, as a consequence, grows up without any sense of responsibility to society. Generally speaking, a child, if reared in the proper atmosphere, turns out to be a good citizen, but it is too often the case in this age that parents shirk this duty. However, the State is also an interested party. Good government depends on good citizenship. Therefore, under existing conditions in this country the school should take a more prominent part in building character. There should be a character course, or something of this nature, in every grade and high school, so that children may gain a better viewpoint of life and appreciate more their duty to society.

Continuation of the Commission

It is the conclusion of the Commission that the work which they have undertaken should be continued in some form for the next two years, by the appointment of a new commission or by the employment of some qualified expert to devote his whole time to the investigation of several phases of the crime problem in this State which your Commission has not been able to study as thoroughly as they might wish.

Several states have established Crime Commissions and in most instances have found it necessary to continue the work of those Commissions over a considerable period of years, especially where the Commissions are made up of men who are donating their time without pay as a matter of public service. The time available to the members of the Commission for this work must necessarily be taken out of their usual business or professional work, and is not sufficient to cover the field adequately in the time the Commission has been in existence. The work, we feel, should be continued on some basis in the future.

The Aim of the Commission's Work

We would close our report with this statement. The object of the Crime Commission in their recommendations and in their proposed measures is not entirely that of making certain the conviction of those accused at the bar of the criminal court. Our aim is rather to improve the chances that justice will be done between the State and the Defendant. We feel that the changes we have recommended are not in any way infringing upon the necessary safeguards thrown about the defendant, but we are concerned that the handicaps, which have been placed upon the State in presenting its case in the Court, in seeking to dis-

cover the perpetrator of offenses and in dealing with the man who has been convicted of crime, shall be removed that society may be better enabled to protect itself against the growing waste and suffering caused by criminal offenders and those who refuse to abide by the rules of civilized society.

Respectfully submitted,

MONTANA STATE CRIME COMMISSION.
George B. Winston, Chairman.
S. D. McKinnon.
John Hurly.
Alfred Atkinson.
Harry B. Brooks, Secretary